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INVESTIGATION
OF THE
DEPARTMENT OF THE INTERIOR
AND OF THE
BUREAU OF FORESTRY

HEARINGS HELD BEFORE
THE JOINT COMMITTEE OF CONGRESS

RELATIVE TO THE

INVESTIGATION OF THE DEPARTMENT OF THE
INTERIOR AND ITS SEVERAL BUREAUS, OFFI-
CERS, AND EMPLOYEES, AND OF THE BUREAU
OF FORESTRY, IN THE DEPARTMENT OF AGRI-
CULTURE, AND ITS OFFICERS AND EMPLOYEES

VOLUME I

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

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MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

MARLIN E. OLMSTED, Pennsylvania.

GEORGE SUTHERLAND, Utah.

EDWIN DENBY, Michigan.

ELIHU ROOT, New York.

E. H. MADISON, Kansas.

THOMAS H. PAYNTER, Kentucky.

OLLIE M. JAMES, Kentucky.

DUNCAN U. FLETCHER, Florida.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, *Secretary.*

II

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**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

JANUARY 26, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

III

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INVESTIGATION OF INTERIOR DEPARTMENT AND BUREAU OF FORESTRY.

WEDNESDAY, JANUARY 26, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR DEPARTMENT AND FORESTRY SERVICE, *Washington, D. C., January 26, 1910.*

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 2.30 p. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Paynter; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, attorneys, representing Mr. Louis R. Glavis.

The committee met pursuant to the following joint resolution:

[PUBLIC RESOLUTION—No. 9.]

[H. J. Res. 103.]

JOINT RESOLUTION Authorizing an investigation of the Department of the Interior and its several bureaus, officers, and employees, and of the Bureau of Forestry, in the Department of Agriculture, and its officers and employees.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a joint committee of both Houses of Congress is hereby created, to be composed of six Members of the Senate, to be appointed by the President thereof, and six Members of the House of Representatives, to be elected by that body. Any vacancy occurring on the committee shall be filled in the same manner as the original appointment. The said committee is hereby empowered and directed to make a thorough and complete investigation of the administration, action, and conduct of the Department of the Interior and its several bureaus, officers, and employees, and of the Bureau of Forestry, in the Department of Agriculture, and its officers and employees, touching, relating to, or bearing upon the reclamation, conservation, management, and disposal of the lands of the United States, or any lands held in trust by the United States for any purpose, including all the resources and appurtenances of such lands, and said committee is authorized and empowered to make any further investigation touching said Interior Department, its bureaus, officers, and employees, and of said Bureau of Forestry, its officers and employees, as it may deem desirable. Said committee or any subcommittee thereof is hereby empowered to sit and act during the session or recess of Congress, or of either House thereof; to require by subpoena, or otherwise, the attendance of witnesses and the production of books, documents, and papers; to take the testimony of witnesses under oath; to obtain documents, papers, and other information from the several departments of the Government, or any bureau thereof; to employ stenographers to take and make a record of all evidence taken and received by the committee, and to keep a record of its proceedings; to have such evidence, record, and other matter required by the committee printed and suitably bound; and to employ such assistance as may be deemed necessary. The chairman of the committee, or any member thereof, may administer oaths to witnesses. Subpoenas for witnesses shall be issued under the signature of the chairman of the committee or the chairman of any subcommittee thereof. And in case of disobedience to a subpoena this committee may invoke the aid of any court of the United States or of any of the Territories thereof or of the District of Columbia

or the district of Alaska, within the jurisdiction of which any inquiry may be carried on by said committee in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this resolution. And any such court within the jurisdiction of which the inquiry under this resolution is being carried on may, in case of contumacy or refusal to obey a subpoena issued to any person under authority of this resolution, issue an order requiring such person to appear before said committee and produce books and papers if so ordered and give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding except in prosecution for perjury committed in giving such testimony. In addition to being subject to punishment for contempt, as hereinbefore provided, every person who, having been summoned as a witness by authority of said committee, or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the investigation herein authorized, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not more than one year nor less than one month.

Any official, or ex-official, of the Department of the Interior, or of the Bureau of Forestry, in the Department of Agriculture, whose official conduct is in question, may appear and be heard before the said joint committee or any subcommittee thereof, in person or by counsel.

All hearings by and before said joint committee or any subcommittee thereof shall be open to the public. The said joint committee shall conclude its investigation and report to this Congress all the evidence taken and received and their findings and conclusions thereon. The sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the necessary expenses of said joint committee, the said sum to be disbursed by the Secretary of the Senate upon vouchers to be approved by the chairman of the committee.

Approved, January 19, 1910.

The CHAIRMAN. The committee will come to order, and the secretary will call the roll.

The secretary (Mr. Hicks) called the roll, and the chair announced that there was a quorum present.

The CHAIRMAN. Is Mr. L. R. Glavis in the room?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. The committee will be glad to hear you make any statement that you desire to make.

Mr. GLAVIS. Mr. Chairman, I was here yesterday ready to proceed. I have brought my attorneys here, and I think that if they will be allowed to examine me that the testimony would proceed more rapidly.

The CHAIRMAN. Are you ready to proceed to testify?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Very well. If the committee has no objection to that course, we will have your testimony taken and your attorney can examine you in chief.

Mr. McCALL. I understand that Mr. Louis D. Brandeis is your counsel.

Mr. BRANDEIS. I am counsel for Mr. Glavis, with J. P. Cotton, jr., of New York.

The CHAIRMAN. Have you any statement that you desire to make before we proceed?

Mr. BRANDEIS. I think that would hardly be necessary, Mr. Chairman. We desire to bring out the facts at the least expenditure of time possible.

The CHAIRMAN. I do not know what you desire to outline to the committee, or what you intend to produce.

Mr. BRANDEIS. I think that perhaps that would be taking the time unnecessarily now, and the time which would otherwise be required can be spent to better advantage in calling attention to the committee, as the evidence goes on, to certain facts and documents which do not appear here, from the witness's own statement.

The CHAIRMAN. Very well.

TESTIMONY OF LOUIS R. GLAVIS.

LOUIS R. GLAVIS, having been first duly sworn by the chairman, testified as follows:

The CHAIRMAN. Before you proceed, Mr. Brandeis, I would like to ask Mr. Glavis a few preliminary questions.

I would like to have you, Mr. Glavis, go on and state in your own way what, if anything, has been amiss in the administration of our public-land laws in the Department of the Interior, or in any branch of it.

Mr. GLAVIS. It is very hard to make a brief answer to that. In fact, my whole statement would perhaps cover that better than I could answer that in a few words. In fact, there are so many things relating to my investigations of the Alaska coal cases that it will be impossible to answer that in a few words.

The CHAIRMAN. Well, if you desire to refer to the Alaska coal cases, you may proceed and state from the beginning your connection with those coal cases, what you know about them, and what has been done by you, or any official of the Interior Department, so far as you know with reference to that matter.

Mr. GLAVIS. Well, in the beginning it would perhaps be best to start in a little before I became acquainted with the Alaska coal cases. During the spring of 1907—I think it was March, 1907—I was working on the Wilson Coal Company cases, in the State of Washington. That was to set aside a couple of patents and cancel four or five coal filings. During that investigation I—

The CHAIRMAN. That was in the State of Washington, was it?

Mr. GLAVIS. That was in the State of Washington, at Seattle; yes, sir.

The CHAIRMAN. Where were those coal lands that you refer to?

Mr. GLAVIS. They were in the western part of Washington. During my investigation of that case, Mr. Henry M. Hoyt, who was assistant United States attorney at Seattle, and myself secured a statement of a man by the name of Watson Allen, of Seattle, in which he admitted that he was considering purchasing the Wilson Coal Company's properties, and went to his attorney in Seattle, who was Mr. R. A. Ballinger at that time, and consulted him as to the advisability of securing an option on the purchase of this property.

The CHAIRMAN. Whose property was that? You said Wilson's property.

Mr. GLAVIS. It was the Wilson Coal Company.

The CHAIRMAN. Where was that property located?

Mr. GLAVIS. It was located in Lewis County, Wash.

The CHAIRMAN. It did not pertain to these Alaska coal fields, did it?

Mr. GLAVIS. Why, it is really leading up to the Alaska coal cases; that is why I mentioned it. He went to Mr. Ballinger, and, as we were out of his confidence, an escrow agreement was drawn up which would give Mr. Allen a right to purchase this property after the title had been secured. The patent had issued on two of them, and the other filings had not been patented or completed.

The CHAIRMAN. Had they been proved up and receipt issued?

Mr. GLAVIS. No, sir; they had not been proved up.

The CHAIRMAN. And no receipt had been issued?

Mr. GLAVIS. No, sir. Those agreements and the deed to the property were placed in the hands of Mr. Ballinger. Of course, you know, as the four claims had not been proved up, perjury would have to be committed in order to secure patents for those lands, the proof requiring them to swear that at the time they make proof you get a cash certificate that they take it in their own interest and for their own use and benefit.

The CHAIRMAN. In these cases that you refer to, had they assigned, or attempted to assign, their interest to anybody at that time?

Mr. GLAVIS. No, sir; that was in 1901, the fall of 1901, or 1902, when this took place.

The CHAIRMAN. One moment. If those four men that you refer to—who had not proved up their claims at that time—had made no assignment or agreement to assign their interest in those claims, they could not very well have perpetrated any fraud up to that time in that matter, could they?

Mr. GLAVIS. Yes, sir; for they were being represented, being handled, by this company. They were practically dummies for the company.

The CHAIRMAN. Had they assigned their interest to the company?

Mr. GLAVIS. No, sir; they could not assign lawfully.

The CHAIRMAN. Had they attempted to assign it?

Mr. GLAVIS. No, sir; there was no evidence that they had, but they acted entirely on what the company wanted them to do.

The CHAIRMAN. Did you see those men or confer with any of them?

Mr. GLAVIS. Yes, sir. The matter is all of record evidence now in the United States court at Tacoma, Wash. They have taken all the testimony, and the case is now awaiting decision by the United States judge at Tacoma.

The CHAIRMAN. In these cases?

Mr. GLAVIS. In those two cases.

The CHAIRMAN. Can you give the title of the case?

Mr. GLAVIS. It is United States *v.* The Wilson Coal Company, The Sterling Coal Company, and Helen Pack Wilson and others. It is in the western judicial district of the State of Washington.

The CHAIRMAN. Were those three different suits, or were they all merged into one suit?

Mr. GLAVIS. In setting aside patents it was a different suit as to each person.

The CHAIRMAN. A different suit as to each patent?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And each claimant?

Mr. GLAVIS. Each claimant, but those different people were named as defendants in each of the two suits. There are only two suits in

the United States court. Patents in the other cases had not issued, and proceedings would naturally be instituted before the Land Office in the other cases.

The CHAIRMAN. Those are suits brought to set aside the patents, are they?

Mr. GLAVIS. Yes, sir. In the testimony of Watson Allen you will find the name of his attorney left out. That was by stipulation. Mr. Ballinger's name does not appear; it is only by his attorney. I merely give that explanation in order that in examining that testimony—

The CHAIRMAN. Did he appear in court in those cases?

Mr. GLAVIS. No, sir; he did not appear in court at all. He was never consulted—

The CHAIRMAN. What connection, if any, did he have with the cases?

Mr. GLAVIS. According to the testimony of Mr. Watson Allen, Mr. Allen went to him and asked his advise concerning this matter, and he drew this escrow agreement and prepared the deeds, the deeds to be delivered and—

The CHAIRMAN. Did he do anything more than draw up this escrow agreement that you speak of?

Mr. GLAVIS. He gave the deeds and the escrow agreement back to the coal claimants at a later day. That was all.

The CHAIRMAN. Did he hold the escrow papers himself?

Mr. GLAVIS. Yes, sir. Mr. Hoyt and I went over to his office after securing that statement in order to try to get a copy of the escrow agreement, because that would have been material in our evidence in the United States court, showing that these people had attempted to transfer their rights, and in fact parted with their title before securing title from the Government, but they were unable to give us the copy.

The CHAIRMAN. At what time was this?

Mr. GLAVIS. That was either in March or April, 1907. I am not quite clear as to which month it was.

The CHAIRMAN. You may proceed.

Mr. OLMSTED. With the permission of the chairman, I would like to ask two or three questions just to ascertain the course of events and to get them fixed in my own mind. Mr. Glavis, where do you reside?

Mr. GLAVIS. I reside at White Salmon, Wash. I live at Portland a good deal of the time.

Mr. OLMSTED. What is your occupation?

Mr. GLAVIS. I am at present in the fruit business.

Mr. OLMSTED. Where?

Mr. GLAVIS. I have a little orchard up there in White Salmon, Wash.

Mr. OLMSTED. I inferred from what you stated that you are, or have been, in the government service.

Mr. GLAVIS. Yes, sir; I have been.

Mr. OLMSTED. When?

Mr. GLAVIS. Well, I have been in the land office since September, 1902, with the exception of a few months during January, February, and March, 1904, when I was not in the service.

Mr. OLMSTED. You were not in the service at that time?

Mr. GLAVIS. No, sir. I was an examiner of the Chippewa Indian Reservation in Minnesota, and I returned to Washington in December, 1903, and did not enter the service again until about March or April, 1904, when I was appointed special agent of the General Land Office.

Mr. OLMSTED. And you left the government service when?

Mr. GLAVIS. It was September, 1909.

Mr. OLMSTED. I want to ask you this question so that I and all of us can have a correct understanding of the matter. You have mentioned the name of Mr. Ballinger in connection with the Allen claims; did you call it "the Allen claims?"

Mr. GLAVIS. The case is known as the Wilson Coal Company case—the United States *v.* The Wilson Coal Company.

Mr. OLMSTED. In what year was it that you had that conversation with Mr. Ballinger?

Mr. GLAVIS. With Mr. Allen, you mean?

Mr. OLMSTED. With Mr. Ballinger.

Mr. GLAVIS. I did not have any conversation with Mr. Ballinger.

Mr. OLMSTED. You stated that he drew a paper.

Mr. GLAVIS. Yes, sir; he drew a paper.

Mr. OLMSTED. When was that?

Mr. GLAVIS. That was in 1902, or 1901; I do not recollect.

Mr. OLMSTED. What official position, if any, did he hold at that time?

Mr. GLAVIS. He had none whatever.

Mr. OLMSTED. Can you tell us when Mr. Ballinger first entered the government service?

Mr. GLAVIS. He became the Commissioner of the General Land Office on March 4, 1907.

Mr. OLMSTED. When did he retire from that office?

Mr. GLAVIS. On March 4, 1908.

Mr. OLMSTED. Then he was appointed Secretary of the Interior when?

Mr. GLAVIS. On March 4, 1909.

Mr. OLMSTED. But at this time of which you have spoken he was not in the government service.

Mr. GLAVIS. No, sir.

Mr. OLMSTED. That is all.

The CHAIRMAN. Mr. Brandeis, you may proceed.

Mr. BRANDEIS. Mr. Glavis, I will ask you to explain what the connection of Mr. Ballinger was with those claims as to which Allen gave his deposition.

Mr. GLAVIS. As attorney for Watson Allen in preparing the deeds and drawing the escrow agreement.

Mr. BRANDEIS. And those deeds were deeds representing coal claims which had been located, but for which no entries or no application for patent had been made.

Mr. GLAVIS. No, sir; the cash certificate had not been issued.

Mr. BRANDEIS. And why did you desire to call the attention of the committee to those claims?

Mr. GLAVIS. Well, it shows that those claims were unlawful at the time they were prepared; that they were agreements entered into between entrymen who had not yet provided to make such agreements.

Mr. BRANDEIS. And why did they not?

Mr. GLAVIS. Because at the time the cash certificate issues they make affidavit that they take the land for their own use and benefit, and not in the interest of any other person.

Mr. BRANDEIS. Then, at the time these cash certificates were issued if, under this agreement which had been prepared, the claimants had made the oath it would have been perjury.

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, you have stated that in the deposition which has been filed in this case, the name of Mr. Ballinger does not appear, but instead of that it is simply referred to as "counsel."

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Is there any other paper relating to this transaction in which Mr. Ballinger's name does appear as the counsel through whom the transaction was arranged and with whom the deeds were left in escrow?

Mr. GLAVIS. Yes, sir; when Mr. Hoyt and I examined Watson Allen I brought over a stenographer to Mr. Hoyt's office and we took down his statement, questions and answers, and that was afterwards written up. That statement is in the United States attorney's office.

The CHAIRMAN. Was that signed by Mr. Allen?

Mr. GLAVIS. No, sir; it was dictated. It was just taken down; it was not signed at that time. In fact, it was never signed, but in his testimony before the referee, before whom this testimony was taken, Ballinger's name was given, but it was not written up by stipulation and consent of counsel.

Mr. BRANDEIS. Who was the counsel for the Government at that time?

Mr. GLAVIS. Mr. Henry M. Hoyt.

The CHAIRMAN. The present attorney-general of Porto Rico?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Was Mr. Hoyt present when this statement was made by Mr. Allen, in which Mr. Ballinger's name appears as the counsel?

Mr. GLAVIS. Yes, sir; and he also went to Mr. Ballinger's law office with me when we endeavored to get a copy of this escrow agreement.

Mr. BRANDEIS. Is this transaction which you have now recited the transaction, or one of the transactions, on which the proceedings to set aside the patent as fraudulent and to rescind the applications, or cancel the applications, is based?

Mr. GLAVIS. Yes, sir; one of them.

Mr. BRANDEIS. We desire, Mr. Chairman, that a copy of that statement in the Land Office, to which Mr. Glavis has referred, and of the deposition, be procured, in order that it may be submitted to the committee.

The CHAIRMAN. Yes; that will be done.

Mr. BRANDEIS. At the time when this deposition was taken, and also at the time when the statement was made in which Mr. Ballinger's name appears, Mr. Ballinger was the Commissioner of the Land Office, was he not?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, after that time——

The CHAIRMAN. Let me see if I understand this matter. At the time you took down this statement, did you take down the statement

of Mr. Allen at the time you took this down and transcribe it, or was that the time you went to Mr. Ballinger's office to get a copy of the agreement?

Mr. GLAVIS. Yes, sir; we went that same afternoon to Mr. Ballinger's office.

The CHAIRMAN. And that was before he was commissioner?

Mr. GLAVIS. No, sir; he was Commissioner of the General Land Office.

The CHAIRMAN. At the time you took that statement?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And you saw him personally

Mr. GLAVIS. No, sir; he was in Washington. We saw one of his partners in the law firm there; I do not know which one it was.

The CHAIRMAN. You did not see Mr. Ballinger, then, at that time?

Mr. GLAVIS. No, sir; he was in Washington.

Mr. BRANDEIS. And it was a later time, some six months afterwards, or about it, that the deposition was taken from which Mr. Ballinger's name was omitted?

Mr. GLAVIS. Yes, sir; it was about that time.

Mr. BRANDEIS. Now, when, Mr. Glavis, did you first have anything specific to do, or did any facts come to your knowledge with reference to the Alaska coal claim?

Senator SUTHERLAND. Before you pass from that, let me ask you why was Mr. Ballinger's name omitted?

Mr. GLAVIS. I do not know that I could answer that. I do not know just what the reason was.

Senator SUTHERLAND. Was anything said about its being omitted at the time?

Mr. GLAVIS. No, sir; not when I was there.

Senator SUTHERLAND. You said in the beginning that there was some stipulation about it. What was that?

Mr. GLAVIS. That was a stipulation between counsel for the Government and counsel for the claimant that his name would not appear; that the testimony would merely read Mr. Allen's attorney, instead of who his attorney was.

Senator SUTHERLAND. Was it a written stipulation?

Mr. GLAVIS. I do not know as to that. I am not sure.

Senator SUTHERLAND. Did you hear the stipulation made?

Mr. GLAVIS. No, sir; it was not made when I was there.

Senator SUTHERLAND. How do you know that it was made?

Mr. GLAVIS. I know it from having talked about it.

Senator SUTHERLAND. With whom?

Mr. GLAVIS. I talked with P. C. Richardson; he was one of our witnesses and he was there all the time. He was the person who told me about it.

Senator SUTHERLAND. Did he claim to be present when the stipulation was made?

Mr. GLAVIS. Well, just whether or not he was present I could not say.

Senator SUTHERLAND. Did he claim to be?

Mr. GLAVIS. I do not recall whether he did or not.

Senator SUTHERLAND. How did he claim to know about it?

Mr. GLAVIS. Just as a man knows about things generally. I did not question him very thoroughly as to how he knew about it.

Senator SUTHERLAND. He made the statement to you, did he, that there had been a stipulation?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. And that Ballinger's name had been omitted?

Mr. GLAVIS. Yes, sir; that was the stipulation.

Senator SUTHERLAND. But he made no statement to you as to how he knew that fact?

Mr. GLAVIS. No, sir; he did not say who told him, or whether he heard it.

Senator SUTHERLAND. But you have no idea as to how he knew it?

Mr. GLAVIS. No, sir; except that he attended all the hearings and would practically know.

Senator SUTHERLAND. Where is Richardson now?

Mr. GLAVIS. He is in Seattle, Wash.

Senator PAYNTER. Where is Watson Allen now?

Mr. GLAVIS. He is in Seattle. His office is in New York Block.

Senator PAYNTER. What was the date of your visit to Mr. Ballinger's office?

Mr. GLAVIS. It was either March or April, 1907.

Senator PAYNTER. What is supposed to be the date of this stipulation to which you have referred?

Mr. GLAVIS. That was some time during the taking of that testimony, and the taking of the testimony in those cases extended over a period of probably four or five months. They would take testimony one day, or for two or three days, and then they would not take any more for probably two or three weeks, as they do in these civil suits. The attorneys would be busy. I do not know just when Watson Allen appeared.

Mr. JAMES. You say he was referred to as attorney?

Mr. GLAVIS. Yes, sir. The records in the whole case would show all of that.

Mr. JAMES. Is it usual to withhold the name and just refer to counsel as attorney?

Mr. GLAVIS. No, sir; I do not think it is. But it was not material in our case as to who his attorney was.

Mr. BRANDEIS. Who was the United States attorney who acted in that case?

Mr. GLAVIS. Mr. Hoyt, and Mr. P. C. Sullivan was United States attorney. Mr. Hoyt was his assistant.

Mr. BRANDEIS. And in this case P. C. Sullivan and Mr. Hoyt were the counsel who acted for the Government, and whatever stipulation was made was made by one or both of those two gentlemen?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And the fact that in the original statement Mr. Ballinger's name appears, and that in a subsequent deposition, based upon that statement, Mr. Ballinger's name is omitted, and a general designation of counsel is inserted, will appear by a comparison with the two documents.

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. What Mr. Ballinger do you refer to?

Mr. GLAVIS. The Secretary of the Interior at present.

Mr. BRANDEIS. Now, Mr. Glavis, I would like you to state in chronological order what the next, or the first fact specifically bearing upon

the Alaska coal cases, and frauds in connection with them were that came to your attention.

Mr. GLAVIS. Some time during June, 1907, I assisted Mr. Hoyt on an investigation of another coal case——

The CHAIRMAN. Before you get to that, let me ask you some preliminary questions. Where are these coal lands in Alaska located?

Mr. GLAVIS. In the southwestern portion of Alaska.

The CHAIRMAN. Back of Katalla?

Mr. GLAVIS. Some of them are back of Katalla, and some are near Matanuska, all that is farther west.

The CHAIRMAN. Then these Cunningham claims are back of Katalla on Bering Strait, are they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. How many of those claims are there in all?

Mr. GLAVIS. Of the Cunningham claims?

The CHAIRMAN. No; all of those Alaskan claims.

Mr. GLAVIS. In both fields, I suppose you mean.

The CHAIRMAN. Yes; both the Matanuska and the Katalla.

Mr. GLAVIS. Approximately 900.

The CHAIRMAN. How many—I will call it short—Katalla fields are there back of that?

Mr. GLAVIS. Approximately, four or five hundred.

The CHAIRMAN. Those claims are considered or talked about in groups, are they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. What are those groups?

Mr. GLAVIS. Back of Katalla?

The CHAIRMAN. Yes.

Mr. GLAVIS. Why, there is the Cunningham group and the Hunt group——

The CHAIRMAN. In the Cunningham group, how many claims are there?

Mr. GLAVIS. There are 33.

The CHAIRMAN. And how much in each claim, a quarter section?

Mr. GLAVIS. Approximately a quarter section. Perhaps all of those are 160-acre claims. There is a "parchment reef," I will call it, of 5,200 acres in the Cunningham group.

The CHAIRMAN. Now, what other groups are there in the Katalla district?

Mr. GLAVIS. There is the Hunt group——

The CHAIRMAN. How many in that group?

Mr. GLAVIS. I think there are 12 claims in that group.

The CHAIRMAN. Of about a quarter section each?

Mr. GLAVIS. There are some fractions in that group, I do not know how many. I do not just know what the acreage is in there.

The CHAIRMAN. What other groups are there?

Mr. GLAVIS. There is the Green group.

The CHAIRMAN. How many are there in that?

Mr. GLAVIS. About 78, I believe.

The CHAIRMAN. What other groups are there in the Katalla district?

Mr. GLAVIS. There is the Doughton group——

The CHAIRMAN. How many in that?

Mr. GLAVIS. I do not know how many there are in that. Then there is the Dunn group, I think.

The CHAIRMAN. How many are there in that group?

Mr. GLAVIS. I do not remember the number.

The CHAIRMAN. Are those all the groups you can recall?

Mr. GLAVIS. I think there is the Brown and the Stracey groups. There are about 83 in the Stracey group.

Mr. BRANDEIS. There is a list here in this volume, Mr. Chairman, from which I think Mr. Glavis can answer these questions.

The CHAIRMAN. Very well; if you prefer, you can put that list in the record, if there is no objection by the committee. That will save time. On what page is it?

Mr. GLAVIS. It is on pages 273 and 274.

(The list referred to is as follows:)

Group:	Filings Involved.	Group:	Filings Involved.
Brown	52	Letcher	4
Bushnell	23	McAlpine	92
Christopher	35	Mackey	66
Dickerman	6	Simmonds	34
Doughten	39	Stracey	35
Dunn	40	Watson	39

Mr. GLAVIS. Then there are some on page 274, but among these are those which are in the Matanuska field. I can segregate these:

(The list on page 274 is as follows:)

Group:	Filings Involved.	Group:	Filings Involved.
Flint	2	Hunt	12
Harkrader	2	Jeter	10
Krepting	4	Kelley	37
Runnells	3	McHenry	8
Walsh	2	Miscellaneous	24
Wardell	4	Morrow	4
White	4	Rathbone	5
Barrett	5	Smith	20
Chezum	12	Stracey	43
Cunningham	33	Thurston	8
Feed	8	Wells	12
Foster	31	Watson	25
Green	73	Willoughby	28
Hartline	16	Young	20

Mr. GLAVIS. I can segregate these if necessary.

The CHAIRMAN. Approximately what proportion of the nine hundred and odd are in the Katalla field, and how many in the Matanuska field?

Mr. GLAVIS. As an approximate estimate, I would say about 500 in the Katalla and about 400 in the Matanuska, but that is only approximate. I would not be able to say whether that is very accurate or not; I have never segregated them.

The CHAIRMAN. Did you investigate the Matanuska claims?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. How many of those claims had been proved up before you proceeded to investigate them—I mean proved up and receipt issued in the local land office?

Mr. GLAVIS. Well, all the Cunningham claims, I think, had been proved up and—

The CHAIRMAN. As a matter of fact, most of those locations were made?

Mr. GLAVIS. There are a few more, Mr. Chairman, that I think had been proved up at that time.

The CHAIRMAN. Had any been proved up in the Matanuska field?

Mr. GLAVIS. I am not positive of that, but there were some more proved up in the Katalla field at that time; but just which ones they were I do not know. There is a man named Arnold in Seattle; he is the president or vice-president of the national bank there. I know he had proved up, but he had not got his cash certificate.

The CHAIRMAN. Coming down to this group of Cunningham claims—33—what time were those locations originally made and staked out and entry filed in the recorder's office or the district land office?

Mr. GLAVIS. The filing of those in the Cunningham group was not made, I do not think, until 1904 or 1905.

The CHAIRMAN. Those that had been proved up in the Juneau office—you know what I mean by "proved up?"

Mr. GLAVIS. Yes, sir; I understand.

The CHAIRMAN. At what time were they proved up, approximately?

Mr. GLAVIS. In 1906, I think—I think it was the fall of 1906. The papers would show exactly, but I have not got them.

The CHAIRMAN. And it was after that proving up that the order of withdrawal was made by the Secretary of the Interior or the President, was it not?

Mr. GLAVIS. As to that, I am not prepared to say.

Mr. BRANDEIS. I think the record shows that it was in 1907—between February and October; most of it in the spring of 1907.

The CHAIRMAN. That the withdrawal was made?

Mr. BRANDEIS. That the payment was made. No; the withdrawal was made in 1906.

The CHAIRMAN. Was it in 1907 that the proof and payment were made?

Mr. BRANDEIS. Yes, sir; mostly in the spring—some few in the fall.

The CHAIRMAN. And it was after that time, in the same year, that the order of withdrawal was made, withdrawing the land from sale and entry?

Mr. BRANDEIS. The withdrawal had been made in 1906. That was made in November, modified in December, and again modified in January; and these payments, I think, were all made subsequent to the final modification of the withdrawal.

The CHAIRMAN. But the locations, Mr. Glavis, had all been initiated prior to the withdrawal, had they not?

Mr. GLAVIS. Yes, sir—of nearly all the filings now made; in fact, they could not make filings unless they had.

The CHAIRMAN. You may proceed, Mr. Brandeis.

Mr. BRANDEIS. Mr. Glavis, will you explain what is meant by a group, and why these claims are spoken of in groups?

Mr. GLAVIS. We designated them that way because a certain number of claims were represented, each one by agents or the giving of powers of attorney, to locate, and under their names we called them as "groups."

Mr. BRANDEIS. And this so-called "Cunningham group" of 33 claims were claims that were located through Clarence Cunningham as attorney for the several persons, each a different person named in the 33 claims?

Mr. GLAVIS. Yes, sir—well, not at the time they were located. They were not all Cunningham; he had not got them. He did not have powers of attorney for all 33 people at the time.

Mr. BRANDEIS. At that time?

Mr. GLAVIS. No, sir; but afterwards, by the time filings were made, he had.

The CHAIRMAN. At the time the original locations were made he did not have the power of attorney?

Mr. GLAVIS. No, sir; not when the first locations were made.

The CHAIRMAN. For not any of them?

Mr. GLAVIS. Oh, yes, sir; for some of them; but the evidence in that case shows that there were two or three claims, I think, carried by one man for quite a while—when they got somebody to locate and file on it—and he turned them over to him.

Mr. BRANDEIS. Now, Mr. Glavis, will you go on and state what you were about to state that occurred in May or June, 1907, in regard to the Alaska coal claim?

Mr. GLAVIS. While in Seattle, Wash., assisting United States Attorney Hoyt in the prosecution of another coal case involving about 5,000 acres in western Washington—

Mr. BRANDEIS. What is the title of that case?

Mr. GLAVIS. The Portland Coal and Coke Company case—a newspaper man came into the office of the United States attorney and Mr. Hoyt introduced me to him. He had a complaint to make about the fraudulent methods by which prominent people in Seattle were endeavoring to secure title to coal lands in Alaska. At that time I had nothing to do with Alaska, but he told me what he knew, and I told him to take the matter up with a special agent—I think it was H. K. Love, in Juneau, Alaska. I told him to lay the matter before him, and he would probably investigate it. That was my first knowledge, I think, with regard to the Alaska coal cases.

The CHAIRMAN. Who was this gentleman who told you this?

Mr. GLAVIS. He is a newspaper reporter on the Seattle Star.

The CHAIRMAN. Can you give us his name?

Mr. GLAVIS. No, sir; I can not recall it right now, but I could look up some papers I have, and I think I could give you his name. Anyway, you can locate him by the fact that in May or April of that year that newspaper, the Seattle Star, had quite a newspaper account about some Alaska coal-land frauds, and he is the man who wrote the article and came to me.

The CHAIRMAN. You may hunt that name up and give it to the stenographer and have it inserted in your remarks.

Mr. MADISON. What official position did you hold at that time when this newspaper man talked to you?

Mr. GLAVIS. I was a special agent—no; I was Chief of the Field Division, then, of the General Land Office.

Mr. BRANDEIS. Of what division?

Mr. GLAVIS. I had charge of California and Nevada at that time.

The CHAIRMAN. What did you call the division?

Mr. GLAVIS. Chief of the Field Division.

The CHAIRMAN. Will you describe what the duties of that division are?

Mr. GLAVIS. The Chief of the Field Division has charge of the work in the territory embraced in his division.

The CHAIRMAN. Of what work?

Mr. GLAVIS. Of all land matters, fraudulent entries of public lands—any matter relating to the acquisition of land.

Mr. DENBY. Would it not be well, Mr. Chairman, to ask the witness to outline what it is that he expects to prove, in order that the committee may follow him more intelligently through the process of proving it? He has not yet indicated what he wishes to prove, or what he thinks he can prove. It seems to me it would be well to have him state what wrong has been done, and what he can prove, and then proceed to prove it.

Mr. JAMES. I think, Mr. Chairman, that his attorney should be permitted to proceed with the examination, and he may perhaps bring it out in quicker detail.

Mr. BRANDEIS. I shall be very glad to bring it out.

Mr. OLMSTED. We are anxious to understand it.

Mr. BRANDEIS. You can observe that the examination has not proceeded on any one line and therefore, naturally, we have been going backward and forward in the different parts of the story, but I shall be very glad to go forward and have the witness tell the story in sequence, and call attention as we go along to the significance of the facts if the witness should fail to do so himself.

Mr. DENBY. My suggestion was to have the chairman ask the witness to state what it is that he seeks to prove; then he can simply proceed and prove it—I mean something by way of a declaration of the case.

Mr. MADISON. That is the function of the counsel, not the function of the witness.

Mr. DENBY. Well, let some one do it.

Mr. BRANDEIS. If the committee desires it, we can pursue that course, but it would require considerable time to go into detail, because it is a long series of transactions covering two years, the significance of which is in that sequence and the events as they from time to time appear. I shall be very glad to do it if the committee desires it.

Mr. GRAHAM. I would suggest to the chairman that it would be well worth the time, if the gentleman is prepared to make a logical or a chronological outline of all he proposes to show by this witness. I think it would avoid a good deal of the interruptions and the development of side issues that are taking place now if we had a general outline of what he expects to show.

The CHAIRMAN. I want to say to the counsel that we shall be very glad to have you make a brief outline statement; not such a statement as you would make in court when opening a case, but state briefly to us, informally, what you aim to prove.

Mr. BRANDEIS. It is this: Mr. Glavis was, as he has stated, in the spring of 1907, chief of the field division of the Portland district. He did not have charge at that time of the California district; he did not have charge at that time of the division which dealt with the

Alaska land. That was another division; but his duties called him in connection with prosecutions of other coal-fraud cases—the Wilson case, the Portland Coal and Coke case, in which Attorney Hoyt acted—called him to Seattle, and there the frauds alleged in regard to the Alaska coal land were called to his attention, indirectly, as it appears, through United States Attorney Hoyt. The matter had already then been in Seattle a subject of discussion in the press, and the fact that prominent people in Seattle appeared among those who were coal claimants and alleged to be implicated in the frauds. He thereafter had called to his attention by Special Agent Jones that he, Jones, had been commissioned to investigate these frauds. That was done. That direction came in a letter of June 21 from Assistant Commissioner Dennett. That letter, to which attention will be called later, directed Mr. Jones to spend some days in preparing himself on the law of conspiracy and the law in regard to coal land, a subject with which Mr. Glavis had become familiar, and with which Mr. Jones was not then familiar. In pursuance of that direction from the assistant commissioner, Mr. Jones came to Mr. Glavis seeking information and instruction on this subject, and it was in that way that Mr. Glavis first became connected with the matter, because Mr. Jones was not under his division; he was in a subordinate position in another of the field divisions.

Subsequently, and almost immediately after that conference, Mr. Jones went to Alaska in pursuance of the directions from his department. On his return he was at once requested to report to Mr. Ballinger at Seattle—Mr. Ballinger was then at Seattle and was then commissioner. He called upon Mr. Ballinger in pursuance of that request and made a report as to what he found, and it was discussed and Mr. Ballinger directed him—modified the directions which had been given in the original letter, which were to make a full and thorough investigation of the Alaska claims; he modified those directions to the extent of making only a partial investigation of those claims, an examination of only one or two, the taking of one or two affidavits in each of the groups instead of fully covering the matter, the statement being made at the time that if it appeared that under the existing law patents could not issue that probably relief would be asked from Congress, additional legislation, which would allow the issuing of patents for those claims which, the indications were, were fraudulent and illegal under the existing law. At that time this was committed to Special Agent Jones because Special Agent Love, who had originally reported upon those claims, lived in Alaska, closely associated, we believe, with the claimants, and by reason of the influences which might be exerted upon him to prevent a full and thorough investigation, Mr. Jones had been selected in his place. Mr. Love aided Mr. Jones in some matters. He was in Seattle at that time, or in the States, and a report was made in pursuance of Commissioner Ballinger's directions under date of August 10, and again supplementing it under date of August 13, calling attention to the fraudulent indications and recommending that a full investigation should be made.

The CHAIRMAN. That was Mr. Jones's recommendation?

Mr. BRANDEIS. Those were Mr. Jones's reports, and they were made. The report of August 10 was made in person, handed to, or a draft of it handed to, Commissioner Ballinger, who was at that time in

Seattle, and later conferences were had and directions given by Commissioner Ballinger both to Mr. Jones and to Mr. Love in relation to this matter, and there were conferences and discussions in regard to the rights, the legality, the fraud of these various claimants. That was in August, 1907. Nothing was heard further by Mr. Glavis of anything being done in regard to this recommendation for further investigation. Mr. Jones, when he returned and met Mr. Glavis again, Glavis had become his superior—that is, he had been changed to the field division, as chief of the field division at Portland—and as the chief of Mr. Jones, his superior, had become charged with the obligation of seeing that matters under Mr. Jones's care were proceeded with.

The CHAIRMAN. The Portland district included Alaska, did it?

Mr. BRANDEIS. The Portland district did not include Alaska, but it included Mr. Jones as a special agent, who had been specially deputed to go to Alaska, because it was believed that some one should be substituted for Mr. Love. That evidently was the intention of the Land Department, at Washington, through Assistant Commissioner Dennett.

Mr. Jones made, on November 1, a further report, there having been nothing heard, and no further directions given him in this intermediate period, and Mr. Glavis, being then his superior, transmitted that report, together with the recommendation that the investigation should be proceeded with. To that recommendation also no reply was made and no action was taken. Meanwhile there had arisen in Alaska, in Seattle, and in the country about it generally quite a general discussion that these coal frauds would not be proceeded against. There was that talk, that Mr. Ballinger was commissioner and that nothing would be done with this investigation.

The CHAIRMAN. It strikes me that this is rather an argument than outlining what you intend to prove.

Mr. BRANDEIS. Well, I did not intend to make it an argument. These are really the facts that this witness is to bring out.

Senator ROOT. Can you not state briefly, Mr. Brandeis, what the general character of the testimony of the witness is to be without going quite so much into detail?

Mr. BRANDEIS. Certainly.

Senator ROOT. It would rather result in a duplication—having things stated twice.

Mr. BRANDEIS. Without going too much into detail, the summary is this: The fact that during that time, particularly when Mr. Ballinger was there, the general direction of this investigation had been in Mr. Ballinger's hands and then nothing was done; that the recommendation made by Mr. Glavis was not acted upon; that is, the recommendation by Mr. Jones and then by Mr. Glavis; that Mr. Glavis then, in the course of another investigation which dealt with one Charles D. Davis, the son of Clark Davis, who was interested in the Alaska coal and petroleum cases in which land frauds were alleged, that this Davis, referring to his dealings in the Alaska coal lands, had made statements which showed that his relations and the action of his group were fraudulent; that Mr. Glavis endeavored then, according to their custom, to get an affidavit of facts, the practice being to get those as a partial fact, those affidavits. I mention this particular thing because it is one that is constantly coming up

in the testimony. Davis told him that he would not give the affidavit, because Commissioner Ballinger, when he had been in Seattle that summer, had talked the matter of their coal claims with him and told him not to make any affidavit, but to wait until the charges had been filed against the coal claimants, and then when he knew what the Government was going to charge to make his statement.

Mr. OLMSTED. To whom was it that Davis made that statement?

Mr. BRANDEIS. He made it to Mr. Glavis, and Mr. Glavis reported that fact.

Senator PAYNTER. What particular coal claims were under discussion between Mr. Jones and Mr. Glavis at that time?

Mr. BRANDEIS. This was incidental. Mr. Glavis was investigating another alleged claim, arising out of some soldier's location—Alaska location—but under a different law, and in that connection Mr. Davis made this statement; and Mr. Glavis, having then general knowledge of this subject, sought to get the affidavit in ahead of the investigation, and it was that fact which he then called to the attention of the Land Office. No reply was made to that. The conditions were such that Mr. Glavis deemed it his duty to lay the whole matter before the department. He wrote to Mr. Schwartz a personal letter, Schwartz being his chief of the division and his superior; and as a result of that Assistant Commissioner Dennett instructed him to proceed at once to Washington, and he came to Washington and laid the whole matter, all the circumstances, before Mr. Schwartz. Mr. Schwartz then laid the matter before Mr. Ballinger. Mr. Glavis subsequently had conferences with Mr. Ballinger and talked over the whole situation, the claims that were made and the charges that were made as to the danger of a scandal in connection with the Alaska coal claim, the matter of Mr. Love's personal connection, and the importance of proceeding to a full investigation. As a result of that conversation Commissioner Ballinger directed him to proceed and make a full investigation of all the claims. Six days were spent by Mr. Glavis in Washington at that time, and he took copies of the papers in all of these Alaska claims and proceeded at once to the West with a view of taking up that investigation. Almost immediately after that ex-Governor Miles C. Moore came to Washington. He had a hearing, it appears, before Commissioner Ballinger with regard to the allowance of those claims—the Cunningham claim and part of the claims which Mr. Glavis had been directed to examine—and on the 22d of January Mr. Glavis learned that an order—

The CHAIRMAN. You forgot to state something there that you ought in all fairness to state, and that was that when Governor Moore came here Secretary Ballinger referred him to Secretary Pierce and said that he himself—that is, Secretary Ballinger—would have nothing whatever to do with it.

Mr. BRANDEIS. I think, Mr. Chairman—

The CHAIRMAN. You omitted that in that connection, leaving the inference that Mr. Ballinger heard Mr. Moore.

Mr. BRANDEIS. I beg your pardon, Mr. Chairman; you are referring to occurrences which came up not in December, 1907, to which I am now referring, but to occurrences in May, 1909, when Mr. Ballinger was Secretary of the Interior. I am referring to the facts which occurred in December, 1907, when Mr. Ballinger was Commissioner of the Land Office.

Mr. GRAHAM. Is that correct, Mr. Chairman?

The CHAIRMAN. I am not sure about that. That fact does not appear in this report.

Mr. BRANDEIS. I beg your pardon, Mr. Chairman. I do not wonder that there is confusion, but it is distinctly a fact about which there is no question. I, perhaps, may incidentally call this to your attention: Secretary Ballinger says that he referred ex-Governor Moore to Mr. Pierce because he had been counsel in these Cunningham cases. The time when he was counsel was after he had resigned as Commissioner of the Land Office, in the interval between his resignation as commissioner and his appointment as Secretary of the Interior. In this earlier period Commissioner Ballinger acted in Washington in these matters precisely as he had acted in Seattle.

Mr. MADISON. You are now relating facts that occurred when Mr. Ballinger was Commissioner of the Land Office?

Mr. BRANDEIS. Precisely.

Mr. MADISON. And the incident to which the chairman refers is an incident which occurred after he became Secretary of the Interior.

Mr. BRANDEIS. Yes, sir.

Mr. MADISON. Now, I understand that. You may proceed.

Mr. BRANDEIS. It was eighteen months later.

Mr. MADISON. I understand you now.

Mr. BRANDEIS. This hearing took place at that time, and as a result of that hearing before Commissioner Ballinger he directed these claims to be clear listed. Glavis was informed of that in January, and the moment he received the information——

Mr. JAMES. What year was that?

Mr. BRANDEIS. That was in 1908, while Mr. Ballinger was commissioner. The moment that Mr. Glavis received this information he telegraphed to Boston; he telegraphed to Washington. He claimed that the clear listing, or the suspension of patents, should be held up; that they were not ready for clear listing, and he followed that telegram by a letter, on January 22, which sets forth clearly the reasons for his telegram. Thereafter he proceeded with this investigation of the Alaska coal claims. Early in March he took certain affidavits in connection with these Cunningham claims and got possession of the so-called "Cunningham journal," which bore, as it was believed, conclusive evidence of the fraud of this claim. In that connection he again saw Commissioner Ballinger. Ex-Governor Moore, who was present when Mr. Clarence Cunningham was making his affidavit, stated to him that but for his protest those patents had been issued, and stated to him further things from which Mr. Glavis inferred that, contrary to all the rules and practice of the department, Ex-Governor Moore had received information as to what the special agents were doing who were working up the evidence to establish the fraud, and it later appeared that that was not then in Mr. Glavis's possession. Clarence Cunningham himself, under date of January 15, 1908, stated that he had copies of all the papers that were on file, and that there was nothing to prevent the issuance of those patents. Thereafter Mr. Glavis received a telegram calling upon him to report specifically upon those Cunningham claims, and he answered, under date of March 30, 1908, that he would report all of the claims for

cancellation as fraudulent; and he also called attention to the fact that what he was doing, his action and his reports, the entrymen were getting knowledge of, a matter which obviously would be of the most serious import and prevent the collection by him of the evidence which he intended to defeat, and expected to defeat, not only these Cunningham claims, but the hundreds of other Alaska claims which were in a similar situation.

Senator SUTHERLAND. Mr. Brandeis, I do not like to interrupt you, but it seems to me you ought to be able to abridge your statement of the ultimate facts which you expect to prove here. You constantly state a fact and then characterize it, argue about it. The time for argument will come hereafter. What the committee desires just now is to get an outline of the ultimate facts which you intend to prove, so that the committee may intelligently understand the testimony when it is offered.

Mr. GRAHAM. Without drawing conclusions. Leave that to us.

Mr. OLMSTED. If you will permit me, the telegram from Mr. Glavis to the Commissioner of the General Land Office of March 30 I have before me. It is five lines long, and your statement of its contents would fill a half page.

Mr. BRANDEIS. I shall endeavor to avoid that. After this period—that is, between March, 1908, and March, 1909, when Mr. Ballinger became Secretary—Mr. Glavis had a number of conferences with Mr. Ballinger, Mr. Ballinger at that time acting as counsel for the Alaska coal claimants.

Mr. JAMES. The Cunningham claimants?

Mr. BRANDEIS. The Cunningham claimants and also other claimants.

The CHAIRMAN. At the time he was Secretary, you might say.

Mr. BRANDEIS. In the interval—that is, acting as counsel for the claimants—not only the Cunningham but other claimants which had been the subject of investigation during the period of his commissionership. I will not undertake to say what those different conversations were, because they will appear from Mr. Glavis's testimony.

Mr. JAMES. Do they relate to these claims?

Mr. BRANDEIS. They relate to these claims; they relate to the obtaining of patents on them and the avoiding of the cancellation of the claims on the ground of their being fraudulent or illegal. After Mr. Ballinger became Secretary the subject of the Alaska claims was taken up and Mr. Glavis was directed to proceed in making his final report. Mr. Glavis will show the circumstances attending that, that he was ordered to make those reports, and to make them final, when the conditions were such that it was impossible to gather all of the testimony requested to a proper presentation of the case for their cancellation.

Mr. McCALL. Was Mr. Ballinger in office at the time when Mr. Glavis had this order that you speak of?

Mr. BRANDEIS. Yes, sir; it was shortly after Mr. Ballinger came in; I think it was on the 5th that he assumed office and the directions to proceed came almost immediately after that.

Mr. McCALL. Who gave the order; does the record show it?

Mr. BRANDEIS. The order was presumably given by the commissioner, or by Mr. Schwartz acting for him, not Mr. Ballinger per-

sonally. Those are the facts. We desire to call your attention to the fact in relation to the construction of the law of May 28, 1908, under which it was supposed that the Alaska coal claimants might seek to secure their patents and that under the construction given by—

Senator PAYNTER. Who gave those instructions to which you refer?

Mr. BRANDEIS. Assistant Secretary Pierce. Under that construction the coal land would have been patented, which could not be patented under the construction given to the law by Attorney-General Wickersham, and it was Mr. Glavis who interposed and secured that review of the law by the Attorney-General.

Mr. JAMES. How did it happen to be submitted to Pierce instead of the Attorney-General originally?

Mr. BRANDEIS. Those are the facts. It was, I may say, to have been, and it was agreed that it should be submitted to the Attorney-General.

Mr. OLMSTED. And was not submitted to him?

Mr. BRANDEIS. It was not submitted to him.

Mr. OLMSTED. His opinion is printed here.

Mr. BRANDEIS. His opinion was given because after the agreement or the understanding that it should go to the Attorney-General had been made and Mr. Glavis had participated in the framing of the letter to the Attorney-General, the matter was submitted to Assistant Secretary Pierce.

Senator PAYNTER. How do those questions usually reach the Attorney-General? I am asking the question for information; I do not know anything about it.

Mr. BRANDEIS. I presume they reach the Attorney-General by a request from the department to give an opinion upon the question, and this was a very important question affecting, as it might, all of the Alaska coal land, because at that time those questions which were specially brought up in the Cunningham case and in other cases were common, it was believed, to a large part of all the locations which had been made in Alaska.

The CHAIRMAN. As a matter of fact, was not the opinion of the Attorney-General sought in a letter issued from the department or from the General Land Office in pursuance of a written request?

Mr. BRANDEIS. It was, but that request and that application to the Attorney-General was the result of the interposition of Mr. Glavis, who believed, and as it appears believed correctly, that the ruling made by Assistant Secretary Pierce by which all of these lands which are believed to have been fraudulent might have gone, or a large part of them, that that was an erroneous construction of the law.

Mr. DENBY. Is it not customary for the official of the department most acquainted with the case to request an opinion? Is it not in the regular course of departmental business the rule that the official who most nearly knows about it should ask for the opinion? In other words, Mr. Glavis, having been the one man concerned in this, would naturally ask for that construction, would he not?

Mr. BRANDEIS. Oh, quite to the contrary, I think.

Mr. DENBY. I was asking for information.

Mr. BRANDEIS. This was not a matter which under ordinary circumstances Mr. Glavis would have had any authority to act in.

Mr. McCALL. With reference to the order which was sent from Washington to complete the investigation and make the report, I find the telegram you referred to, as follows:

Alaska coal investigations must be completed within sixty days. What number additional agents do you require? Answer by wire.

SCHWARTZ.

Mr. BRANDEIS. Yes, sir.

Mr. McCALL. Was that what you referred to?

Mr. BRANDEIS. That is one of the telegrams, and the specific one to which I referred.

Mr. OLMSTED. But you said it was presumably issued by the commissioner.

Mr. BRANDEIS. No; I said either by the commissioner or by Schwartz, who was his direct superior.

Mr. OLMSTED. You said at first "presumably by the commissioner."

Mr. BRANDEIS. Mr. Dennett was then assistant commissioner. This was the year 1909, after Mr. Ballinger became secretary.

Mr. OLMSTED. That was in March. Now, I want to call your attention to this matter, because I know you want to be fair in this case——

Mr. BRANDEIS. Absolutely.

Mr. OLMSTED. I want to call your attention to a further telegram from Mr. Schwartz to Mr. Glavis, as follows:

Wire names of different towns or cities in which you desire testimony to be taken in hearings in Cunningham group; this office will appoint a commissioner to take testimony, you to represent Government's case with such legal assistance as you require; answer at once.

SCHWARTZ, *Acting Commissioner.*

That telegram is dated July 6.

Mr. BRANDEIS. Yes, sir.

Mr. OLMSTED. Three or four months afterwards?

Mr. BRANDEIS. That is a transaction which I have not yet reached, and which deals with an entirely different question from what I have considered up to the present time.

Mr. OLMSTED. It is in relation to the Cunningham case.

Mr. JAMES. Would it have been possible to have concluded the investigation of these Alaska coal lands within two months from April 9?

Mr. BRANDEIS. It would not have been, for this reason——

Mr. McCALL. Pardon me. I was going to call your attention, then, to a telegram of the same date from Glavis, in which he says:

To complete Alaska cases in two months Jones and four more agents necessary; 600 affidavits to secure. Snow will prevent field examination till July.

Mr. BRANDEIS. I think that answers the question, really.

Mr. McCALL. Do you know whether those agents—that is, Jones and four more agents—were sent by the commissioner?

Mr. BRANDEIS. Agents were furnished. The date of that was July.

Mr. McCALL. No; the date of this is the same as the date of Schwartz's telegram, April 20.

Mr. OLMSTED. The one which I read was in July.

Mr. BRANDEIS. Agent Jones was furnished for a certain period. His other engagements doubtless prevented his acting during all the

time that Mr. Glavis desired him to act. Agents were furnished, to answer your question, sir [referring to Mr. James].

The CHAIRMAN. Mr. Brandeis, I wish you would confine yourself as much as possible to a statement of what you want to prove, and not indulge in too much argument. The argument will come later.

Mr. BRANDEIS. I was endeavoring to answer a question which had been put to me by a member of the committee.

Mr. JAMES. I asked him a question, Mr. Chairman.

Mr. BRANDEIS. The reason why the investigation, or a reason why the investigation could not be completed, was that a field examination in Alaska was essential to the completion of the proof, the fact being that the charge was that these different claims were being proceeded with under a joint agreement; they were not individual claims, not claims that stood alone, but where there had been a fraudulent agreement—the fact as to how those claims were being worked actually, because they were being worked; whether they were being worked together; the circumstances were different circumstances which were deemed by Mr. Glavis and by others to be essential to the proper preparation of the evidence. That could only be determined after the snow was off the ground in Alaska, and therefore it was not until July that any one could proceed to Alaska to make the investigation, and that was the specific reason why it was necessarily impossible to do that.

Mr. OLMSTED. Was not the work postponed till November to permit of that field investigation?

Mr. BRANDEIS. It was; and the circumstances under which that was done are of importance and ought to be brought out in this connection. Mr. Glavis insisted that it should be postponed. When he insisted that it should be postponed there was a refusal to assent to his request on the part of the Land Office. He then applied to the Forestry Department, which was interested in these claims by reason of the fact that a part of them was within the Chucatch Forest Reserve, asking cooperation to secure a postponement. At the same time Mr. Sheridan was put in charge of these cases, and Mr. Glavis was notified that Mr. Sheridan would be put in charge after he protested against going on with the hearing at that time. When Mr. Sheridan investigated these cases, and when Secretary Wilson, on behalf of the Forestry Department, requested that there should be a postponement, to permit that field examination to be made, then, and then only, was the postponement granted. As a matter of fact, the hearing thereof did not commence until last November, and the taking of the testimony began then, but has not yet been completed.

The CHAIRMAN. I want to call your attention to an order of Mr. Schwartz's in that connection, on page 20, where Sheridan was put in charge:

Have this day wired Sheridan as follows: "Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agent or assistance necessary to bring case to prompt hearing and close."

That is the instruction to Sheridan.

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. And then, following that, is this to Mr. Glavis:

You will render Sheridan every assistance; meantime continue investigations. Case already consumed more time and expense of men than any other case;

pending investigation can not proceed indefinitely; results of pending investigation in Alaska will go into record before concluding hearings.

Mr. BRANDEIS. Yes, sir.

The **CHAIRMAN.** While Sheridan was put in charge Glavis was continued with him in the work?

Mr. BRANDEIS. He was permitted to continue his investigation.

The **CHAIRMAN.** He was ordered to; he was not permitted, but he was ordered to.

Mr. BRANDEIS. Directed to; yes, sir; and he did. Of course I have stated but a small part of the facts—the barest outline of the facts—and for a proper understanding of what has occurred it is essential that the detail of these facts, the exact position of Mr. Glavis, what he did, what was the result of his acts, how far he was cooperated with, and how far his acts were defective—all of these facts must be gone into in detail, and it was because they must be considered in detail and with the proper understanding in the actual sequence of events that I hesitated at the outset to enter into a statement of facts which I believe could not be illuminating to the committee unless it was complete; and I anticipated these very facts which have been brought out by the members of the committee. Once I go into details, I will explain at another time—or I am prepared to make another statement—because I believe that each and every one of the facts that I want to call to the attention of the committee is essential to a proper understanding of Mr. Glavis's excuse and the action of the department.

Mr. DENBY. In brief, if I may ask, what charges do you make against the department as the result of your summary of the facts?

Mr. BRANDEIS. I say this, that it appears that Mr. Ballinger while commissioner took an active part in the controversies which arose, contests, investigations relative to the validity of these claims, and necessarily in that connection, among other things, in passing upon and ordering patents to issue in certain of these claims, acquired knowledge which was important, at all events, and took an active part as an officer of the Government in connection with these claims through the whole period of a year.

Mr. MADISON. Do you mean to charge, in favor of the claimant?

Mr. DENBY. Improperly?

Mr. BRANDEIS. The statement I have made is that Commissioner Ballinger acted in reference to these claims—personally acted—not merely constructively, but personally as commissioner, had part in the action of the department relating to the investigation of these claims, and whether or not patents should be issued in regard to them. That having been the case, such action having continued during the greater period of the time in which he was commissioner, when he ceased to be commissioner he then took the position as counsel for some of those claimants.

Senator SUTHERLAND. If I understand you, your claim is not that Mr. Ballinger acted corruptly in the administration in his office as commissioner, but that he made improper use of the information he obtained while commissioner. Is that your position in this case?

Mr. McCALL. That is, after he retired?

Senator SUTHERLAND. Yes; after he retired he made an improper use of the information which he had obtained as commissioner.

Mr. BRANDEIS. That is not all. I submit that the fact that he acted at all aside from the question of the use which he made, that he acted as counsel in reference to a continuance of the controversy in which he had previously acted as an officer of the Government, his action not being consistent with the highest conduct of an important office of the Government.

Senator SUTHERLAND. I want to get your position with reference to the matter.

Mr. BRANDEIS. But that is not all.

Senator SUTHERLAND. As to that particular act of government do you, or do you not, claim that he acted corruptly or improperly while he was commissioner?

Mr. BRANDEIS. Yes, sir; I say that he acted improperly; that is, acted without due regard to the interests of the Government, while he was commissioner.

Senator SUTHERLAND. While he was commissioner?

Mr. BRANDEIS. While he was commissioner. I do not presume that you desire me to point out the respects in which that is so.

Senator SUTHERLAND. And also that it was improper for him to accept this employment, in view of the fact that he had obtained certain information while he was commissioner.

Mr. BRANDEIS. And that he had acted in important respects while he was commissioner.

Mr. GRAHAM. When you say you charged that he acted without due regard to the interests of the Government, do you mean to include in that statement at that time he so acted he had knowledge concerning those matters?

Mr. BRANDEIS. Of what?

Mr. GRAHAM. Knowledge that would enable him to know that he was acting without due regard for the Government's interests.

Mr. BRANDEIS. Knowledge which should have enabled him to know.

Mr. GRAHAM. I have drawn this conclusion from your statement, that you want us to infer that Mr. Ballinger in acting as commissioner, with regard to these claims, acted favorably toward the claimants, that is, that he did not maintain that equal and impartial position that he should, but that he inclined toward those who were trying to establish their rights to this land against the Government. Am I right in that conclusion? Either you have charged something, or you have not.

Mr. BRANDEIS. That is true; but that does not state it all. That is a part of what I have stated.

Mr. OLMSTED. Right there will you state what action of Mr. Ballinger's taken while he was Commissioner of the Land Office, you claim to have been improper, so that we may follow you.

Mr. BRANDEIS. The first action that was improper was a failure to thoroughly investigate these claims with a view to their cancellation. It was that matter, that condition which was changed as a result of the communications of Mr. Glavis and the visit of Mr. Glavis to Washington in December, 1907, and that is that there had been improper action until Mr. Glavis intervened to secure a thorough investigation. That is the first.

Mr. OLMSTED. Improper action, or lack of action?

Mr. BRANDEIS. Lack of action, after Mr. Glavis intervened to secure direction from the commissioner to proceed to investigate all of the claims with a view to a cancellation of such as were fraudulent there was improper action in directing certain of the claims, naming the Cunningham claims which had been committed to him for investigation—in directing them to be patented without giving him an opportunity—any opportunity at all—to make the investigations.

Mr. OLMSTED. Was such direction given?

Mr. BRANDEIS. It was given, and given without question. The conference between Mr. Glavis and Commissioner Ballinger, in which he was directed to investigate the claims, including the Cunningham claim, took place on the 13th or 14th of December, 1907, and Mr. Glavis was occupied there that day and until the 19th, when he left Washington, in getting together all the papers for the purpose of pursuing this investigation which had been committed to his charge. In December, later in December—the 22d or 23d of December—in the face of that order when ex-Governor Moore came here he was awarded a hearing before Commissioner Ballinger, of which Mr. Glavis knew nothing, and as a result of that hearing Commissioner Ballinger personally directed the clear listing of those claims, and the patents would have issued, not only issued but issued with great expedition as a result of the telegram sent to Juneau, but for the fact that the circumstance that the patent had been ordered issued was communicated to Mr. Glavis and he interposed and stopped the issue.

Mr. OLMSTED. Communicated by whom?

Mr. BRANDEIS. Communicated to Mr. Glavis by the department. The department communicated it. It was in answer to that letter of the department which was his first knowledge of the telegram of the 22d of January and the letter requesting that the clear listing be canceled.

Mr. MADISON. Do you expect to show by Mr. Glavis that he told Commissioner Ballinger in plain, unmistakable English that he believed and had evidence to believe that these Cunningham claims were rotten and ought not to be allowed?

Mr. BRANDEIS. That he believed they were fraudulent, and that in view of—

Mr. MADISON. And that he had evidence to support it?

Mr. BRANDEIS. That he had certain evidence—not evidence in the sense of sufficient evidence to establish it, because that was the whole thing that was to come afterwards, but that the indications were that they were fraudulent, and that a full special investigation ought to be made, and that Mr. Ballinger told him to proceed and make that investigation, and that he had absolute confidence that Mr. Ballinger wanted that investigation made at that time.

Mr. JAMES. You stated that Mr. Glavis complained to the department that certain information that he had given to the department relative to these Cunningham claims had been conveyed to people in Washington. Who do you charge did that?

Mr. BRANDEIS. It was stated—of course, we do not know the fact, but it was stated—that Commissioner Ballinger had himself given that information, and Clarence Cunningham, in a letter dated January 15—and you will see that that is immediately after the clear-listing order—in a letter dated January 15 of Clarence Cunningham

to the receiver at Juneau he stated confidentially that he had been furnished with copies of all the papers. That was in connection with an effort to hasten the patenting, because the great effort was made to push those patents through.

Mr. JAMES. Did he state who furnished those?

Mr. BRANDEIS. It is stated, I think, that the commissioner furnished them.

Senator PAYNTER. Is it customary for a commissioner to furnish copies of records in his office? I ask for information.

Mr. BRANDEIS. I understand that it is the rule, the unquestioned rule, of the office never to furnish any information relating to what special agents are doing in regard to the investigation of claims alleged to be fraudulent; that the ordinary facts in the office are kept in a file which is open to proper persons interested in that matter—that is, to the attorneys and others interested in the matter.

Mr. OLMSTED. Do you propose to prove by Mr. Glavis that Mr. Ballinger did give out that information?

Mr. BRANDEIS. I propose to prove by Mr. Glavis two things; in the first place, we will ask your committee to call for that letter from the Juneau land files, in which the attorney of these Cunningham claims states confidentially to the receiver that copies of all the papers have been furnished him. We will also point out to the committee that Mr. Glavis called attention at once—that is, during the same month of March—to the fact that the entrymen, referring to ex-Governor Moore particularly; that the entrymen appeared to have knowledge of the information which ordinarily would be admitted to be confidential information; that is, as to what the special agents were doing. Now, where that information came from to them, other than it was stated, and why, I do not know.

Senator FLINT. He reported that to whom?

Mr. BRANDEIS. To the General Land Office.

Senator FLINT. Did he receive any reply to that communication?

Mr. BRANDEIS. I think he received no reply at that time.

Senator FLINT. Afterwards did he receive a reply?

Mr. BRANDEIS. He did receive a reply, the letter stating that they—I forget just the language, but I will call attention to the letter later; it stated that no information was given, but we had the evidence from the fact that those persons to whom he went knew what to a certain extent he was doing—that is, there had been a leak; he could not of his own knowledge know where it emanated.

Mr. JAMES. You charge, of course, that it would be a violation of the rules of the department to have given out this information?

Mr. BRANDEIS. Absolutely.

Mr. OLMSTED. To be entirely fair, you have seen, I presume, in the papers printed with the message of the President the unequivocal denial of Secretary Ballinger that anything was given out.

Mr. BRANDEIS. We have, certainly, and I wish to ask the committee to consider that statement and to remember the other statement which involves, of course, a matter of confidence in connection with those denials.

Mr. DENBY. Mr. Brandeis, we are seeking to ascertain specifically what the charges were. Do I understand now that they are, first, that upon certain occasions Mr. Ballinger acted improperly, but not

entirely corruptly, and upon other occasions he designed and intended to act corruptly, but was prevented from doing so by Mr. Glavis?

Mr. BRANDEIS. I have not used the word "corrupt" in any case.

Mr. DENBY. I wanted to get it straight in my mind.

Mr. BRANDEIS. I say without due regard to the interests of the people and the Government.

Mr. DENBY. That is, he acted improperly; that is, without propriety; secondly, he intended to act without due regard to the public interests—in other words, corruptly—and was prevented from doing so by Mr. Glavis.

Mr. BRANDEIS. I have not used the word "corruptly." I have desired to bring, and I desire now to bring, without characterization, the facts before the committee. It seems to me an extremely solemn matter, a matter in which no charge of corruption ought to be made, but that your committee should, with due regard to the seriousness of its situation, pass upon the details of this evidence and determine whether the great trust of holding this land for the people of the country, present and future generations, is in safe hands. I carefully refrained from making any charges except the charge of the facts, in order that you gentlemen may, upon the fullest consideration, determine what the safety and the honor of the country demand.

Senator FLINT. Mr. Glavis testified about matters in connection with the Wilson Coal Company. That was prior to the time when Mr. Ballinger was Commissioner of the General Land Office, was it not?

Mr. BRANDEIS. Yes, sir.

Senator FLINT. You made no mention of that in connection with your statement, and I want to ask you whether there was any charge with reference to Mr. Ballinger acting improperly by reason of the fact of his employment in this coal case prior to the time he was commissioner?

Mr. BRANDEIS. Yes, sir; not the fact that he did act, but the transaction in which he acted. That transaction in the Wilson coal cases was a transaction which necessarily involved for its ultimate carrying out perjury on the part of the applicants and a fraud upon the land office in this way: You see, at the time when that agreement was made under which the deeds were placed in escrow the entry had not been made; the affidavit had not been made which was essential to the securing of the patent. When that affidavit was made it was an affidavit which would have to declare that the entrant, the entryman, was himself alone interested, and that he acted on behalf of himself and not on behalf of any other person or persons, but the existence of this escrow agreement and the fact that he had executed these deeds was a fact directly contrary to the oath which he would be obliged to take; consequently, Mr. Ballinger, when he as counsel drew that agreement and arranged for this plan in escrow, arranged for what was in itself, if carried out, a fraud upon the land office, involving illegality and involving ultimately perjury on the part of the entryman. We call attention to that fact, a fact which came out after Mr. Ballinger became commissioner, because it was an important fact, which ultimately affected the action of United States Attorney Hoyt and the action of Mr. Glavis in coming to Washington and in pointing out to the commissioner, and before that

to the chief of his own division, the importance of taking action with a view to avoiding what he feared would be a great scandal in the Land Department. That fact, a fact which was of such importance as you will see, generally, led to the United States attorney, in connection with the counsel for the defendants, omitting in the deposition, or from the deposition, the name of the counsel who had acted in the preparation of the papers by which these land transactions charged as fraudulent would be carried out.

Mr. GRAHAM. Mr. Brandeis, you referred to a number of documents and communications, which you said were beyond your reach, but which the committee could probably reach, and which you were asking to have produced.

Mr. BRANDEIS. Certainly.

Mr. GRAHAM. Have you a list of those made up that you could submit to the committee?

Mr. BRANDEIS. I would be very glad to furnish the committee with a list of those documents later.

The CHAIRMAN. I wish you would furnish me a list and I will try to get them.

Mr. JAMES. Can you furnish the pleading or the affidavits, or whatever is necessary, in regard to your statement with respect to the Wilson Coal Land Company case?

Mr. BRANDEIS. There are two papers in that connection which will be among the list we ask for. The first is the final statement taken down in the presence of United States Attorney Hoyt and Mr. Glavis, in which Mr. Ballinger's name appears as the counsel who drew the agreement. That is the first paper.

The CHAIRMAN. Let me ask for information. Was that paper sent to the Land Office here?

Mr. BRANDEIS. No, sir. That paper is in the land office at Seattle, I understand.

Mr. GLAVIS. That is, in the United States attorney's office at Seattle.

Mr. BRANDEIS. And also in the United States attorney's office—another copy of it.

The CHAIRMAN. Will you please give me such a description of that paper as to enable me to secure it?

Mr. BRANDEIS. Certainly.

Senator SUTHERLAND. I suggest, Mr. Chairman, that the list be furnished as soon as possible. Mr. Brandeis said later on he expected to have them.

The CHAIRMAN. I shall be glad to furnish it promptly.

Senator SUTHERLAND. These papers have got to be sent for to Seattle and it will take some time to obtain them.

Senator ROOT. Do you know whether the proceedings in that litigation are in print?

Mr. BRANDEIS. The case was heard last fall. It has not yet been decided, as far as we know.

The CHAIRMAN. What was the nature of the case; was it a criminal or a civil suit?

Mr. BRANDEIS. It was a civil suit.

The CHAIRMAN. To set aside those two patents?

Mr. BRANDEIS. Yes; there were several proceedings. This case that Mr. Glavis referred to was a suit to set aside those two patents

for the 320 acres. The other proceedings were proceedings in the land office to cancel the location which had been made in respect to the other land—not the 320 acres, but the balance of it, about 600 or 700 acres.

The CHAIRMAN. That proceeding could only be had in the Land Department.

Mr. BRANDEIS. That proceeding has not been taken, but the paper is filed—the unsigned paper—in the land office and in the United States attorney's office, both.

Mr. MADISON. The charge being made by the Government in both cases that the entrymen had previous to proof entered into a written contract to sell the property upon acquiring title from the Government?

Mr. BRANDEIS. Precisely; the fact of giving deeds was evidence of that.

Mr. MADISON. That the deeds would not be operative until delivered. They were in escrow.

Mr. BRANDEIS. Precisely. The significance of it, or one of the reasons why it is significant, is that the transaction was in its nature a transaction similar to that arising in the Cunningham cases and in many of those other cases in which the fraud alleged was a fraud similar to that—I do not mean to say carried out in precisely the same detail, but under the general provision of the law by which claims taken under those circumstances are illegal and fraudulent.

Senator FLETCHER. Can you state what has become of the case of *The United States v. The Portland Coal and Coke Company*, decided by Judge Hanford in October, 1908, to which the Secretary refers in his letter of May 24, 1909, to ex-Governor Moore? Is that still pending, or is it on appeal?

Mr. BRANDEIS. No; I think the decision in that case was at once acquiesced in. The decision was accepted as the law of the case. Is that not so, Mr. Glavis?

Mr. GLAVIS. The defendants waived the right of appeal.

Senator FLETCHER. We ought to have a copy of that opinion, because it seems to be quoted by the Secretary.

Mr. BRANDEIS. Yes, sir; that opinion is duly reported, if I remember right, in the Federal Reporter.

Mr. GLAVIS. No; I do not think it is.

Senator FLETCHER. In Mr. Glavis's statement he says that it has never been reported.

Mr. GLAVIS. No; I do not think it has ever been reported.

Mr. BRANDEIS. A copy of that opinion was, as a matter of fact, handed to Mr. Ballinger while he was acting as counsel for the claimants, and during the period in which he was out of office, by Mr. Glavis.

Senator FLETCHER. Most of this outline. Mr. Chairman, it seems to me, is embraced in the printed document that we have before us.

Mr. GRAHAM. But it would take us a good while to boil it down.

Senator FLETCHER. I would like to ask counsel if there is anything over and above the statement set forth in this document by Mr. Glavis, in his letter to the President, that he desires to bring out.

Mr. BRANDEIS. There is a great deal.

Mr. JAMES. The Wilson coal case was not set forth in that document, was it?

Mr. BRANDEIS. No, sir; there is no reference made to that. There are a very considerable number of facts, and a considerable number of documents—I mean statements to be made orally and many statements that are evidenced by documents—which were not in Mr. Glavis's possession, and many of which are not yet in his possession, which are necessary in order to set the matter properly before you, and which other facts, or most of which other facts, were not before the President or the Attorney-General when this matter was considered by them.

The CHAIRMAN. I wish that you would proceed with your examination, unless you desire to state something further.

Mr. BRANDEIS. Very well. I asked you to state last, Mr. Glavis, your communication with the office in which you transmitted the third report of Special Agent Jones, under date of November 1, 1907, in relation to the investigation of these coal cases, and if you have had any reply to that communication.

Mr. GLAVIS. Mr. Jones had explained to me what action he had taken in the coal cases, and we had commented on the failure of the department to take any other action, and I suggested that he write another report, which he did; and I think I approved it, or initialed it. I do not think I wrote a letter of transmittal. Usually my habit was to initial my approval of papers. We heard nothing further from that.

Mr. BRANDEIS. Then what action did you take in this matter?

The CHAIRMAN. Will you let me interrupt you? You referred to what Jones wrote. Is that the report? I wish you would turn to your book, commencing on page 26 and ending on page 33, and state if that is the report.

Mr. GLAVIS. No, sir; this report is the report dated about November 1, 1907.

The CHAIRMAN. Is that in the book?

Mr. BRANDEIS. No, sir; it is one of the documents we will ask the committee to produce. Now proceed, Mr. Glavis.

Mr. GLAVIS. Shortly after sending that report I received instructions to proceed to Seattle, Wash., to investigate the soldier's additional application for certain land near Katalla, Alaska, and in the course of that investigation I interviewed Mr. Charles D. Davis, I think those are his initials, who was interested in the Alaska Petroleum and Coal Company. I ascertained from my conversation with him that he had knowledge about the various transactions of the company relative to certain Alaska land, and also a number of newspaper articles charging them with fraud. I endeavored to get an affidavit from him setting forth those various connections by the company with the coal claims, and he refused to make any statement to me, stating that they had discussed that matter with Commissioner Ballinger when he was in Seattle last summer, and that the commissioner had advised them not to make any statement until they knew what they had to meet.

Mr. BRANDEIS. Will you explain to the committee whether the securing of these affidavits in the way you sought to get Mr. Davis's affidavit was the ordinary method you pursued in preparing those cases?

Mr. GLAVIS. In the Alaska coal cases?

Mr. BRANDEIS. Yes; explain that fully.

Mr. GLAVIS. Yes; that was practically the only way we could get evidence in those coal cases, to get it from the claimants themselves, because nobody else had any knowledge of their understanding and agreements, and we had to rely entirely upon their evidence in getting it, and for that reason I was very anxious to get Mr. Davis's statement. In fact, I never got any statement from that Hunt group—I do not think I did. I am not sure, but I do not think so.

Mr. BRANDEIS. Is Mr. Davis in the Hunt group?

Mr. GLAVIS. Yes; until during the summer of 1909; some of the other agents had secured affidavits but they had not gotten the true facts.

The CHAIRMAN. Beyond the fact that Mr. Davis stated to you what Mr. Ballinger had said you knew nothing about it, did you?

Mr. GLAVIS. I told Mr. Ballinger about it in a report November 12, 1907, in reporting upon this soldier's additional filing; I reported this conversation. Furthermore, as soon as I left Mr. Davis's office I made a memorandum of it so as not to forget it.

Mr. BRANDEIS. Have you that memorandum here?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Will you produce that memorandum?

(Mr. Glavis here produced a memorandum.)

Mr. BRANDEIS. Will you read the memorandum, please.

Mr. MADISON. Is this the original memorandum that was made at the time?

Mr. GLAVIS. Yes, sir; I made it on an envelope that I had in my pocket at the time as soon as he went out of the room.

Mr. MADISON. And this is the original that was made right at the time?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And it is a memorandum made in pencil?

Mr. GLAVIS. Here is a memorandum of a telephone number; I do not know what it is—"Main 1076." I do not know what that is. Then following that is a line drawn under it and this statement:

Young Davis refused to make an affidavit in re coal claims, stating they had asked Judge B. what to do about it, and he advised them to do nothing and not to make a statement until charges were filed; they would then know just what they had to meet.

Senator ROOT. What is the date of that, Mr. Glavis?

Mr. GLAVIS. November 12, 1907, is the date of the letter of transmission.

Senator FLETCHER. Is the memorandum dated?

Mr. GLAVIS. There is a postmark on the letter. It is an envelope or a letter that I had in my pocket. The postmark is October 18, 1907, 4.30 p. m., Seattle, Wash. Then there is another notice on it; it does not refer to this case though.

Senator SUTHERLAND. You say you stated to Mr. Ballinger the substance of the talk you had with Davis?

Mr. GLAVIS. Yes, sir; I stated that in the report.

Senator SUTHERLAND. What did Mr. Ballinger say to that?

Mr. GLAVIS. I first made it—

Mr. BRANDEIS. Would it not be desirable to have the letter read in which he stated it?

Mr. McCALL. Is that letter printed in this volume?

Mr. BRANDEIS. I do not know about that.

The CHAIRMAN. In order that we may go orderly into this matter, please hand the original memorandum to the stenographer.

(The memorandum was handed to the stenographer.)

Senator PAYNTER. Was Mr. Ballinger the Commissioner of the General Land Office at that time?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Was this statement made to Mr. Ballinger in writing?

Mr. BRANDEIS. It was a statement made in writing in a letter of November 12, 1907.

Mr. McCALL. What page is that on?

Senator SUTHERLAND. Excuse me. Let me understand this matter. I understood Mr. Glavis to say that he told Mr. Ballinger of this.

Mr. GLAVIS. I did, but at a later date in discussing the Alaska coal cases. But that is getting ahead of the sequence of my story.

Senator SUTHERLAND. You say you told Mr. Ballinger of this conversation. Did he make any statement to you about it?

Mr. GLAVIS. I did not tell him directly about that. I will have to go into that in order to have you understand it thoroughly.

Senator SUTHERLAND. Can you not answer that question—did you tell Mr. Ballinger about this conversation?

Mr. GLAVIS. I told him generally of the rumors that were floating around Seattle and in the immediate vicinity of Seattle; that the claimants and other people were stating that they were going to get their patents and were not going to have any further investigation.

Senator SUTHERLAND. That is not the point that I am directing your attention to at all. Just listen to my question. In the talk you had with Mr. Davis, Davis told you that Judge Ballinger had stated to him that he had better not make any statement about it until the charges had been filed?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Did you make report to Mr. Ballinger of that statement of Davis?

Mr. GLAVIS. Yes, sir; I did, in the letter.

Senator SUTHERLAND. Did you tell him orally at any time?

Mr. GLAVIS. No, sir; except what would be covered by my general statement to him in December, 1907.

Senator SUTHERLAND. Then I did not quite understand you a moment ago when you said you told him of this talk you had with Davis.

Mr. GLAVIS. I told him in the letter.

Senator SUTHERLAND. That is what you meant?

Mr. GLAVIS. Yes, sir.

Senator PAYNTER. What is the date of that letter?

Mr. GLAVIS. November 20, I think.

Mr. BRANDEIS. It is November 12, 1907.

The CHAIRMAN. On what page of this volume is it?

Mr. BRANDEIS. Pages 33 and 34.

Senator FLINT. What date is on the envelope?

Mr. BRANDEIS. The postmark on the envelope is October 18, 1907.

Mr. JAMES. Do you state that as the day you made the memorandum, or the date of the letter?

Mr. GLAVIS. No; that happened to be in my pocket at that time.

Mr. JAMES. You can not state, then, what date you made the memorandum on the envelope?

Mr. GLAVIS. I can, by consulting my reports, tell the exact date. I talked with Mr. Davis on these cases, but I can not remember.

Mr. BRANDEIS. These daily reports will be among the papers that we asked for in order that the dates may be fixed. The date of the letter is November 12, 1907, obviously within a few weeks, at the latest, after the conversation took place. The letter, as the committee will see, refers in the first instance to this matter as to which Mr. Davis was being particularly interrogated.

The CHAIRMAN. You had better put in the letter so as to make the record complete.

Mr. BRANDEIS. I put in this letter of November 12 and would like to call your attention to the particular passage—perhaps, with your permission, I will read it.

The CHAIRMAN. You need not read it.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Portland, Oreg., November 12, 1907.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By your wire dated October 28, 1907, you directed me to proceed to Seattle and investigate the protests filed by W. M. Bruner and P. J. Erussard, both of said protests affecting the sufficiency of soldier's additional application No. 69, made February 20, 1906, by Charles Davis, of Seattle, Wash., as assignee of George Bell, at Juneau, Alaska. The protest of Bruner also states that—

"It is a matter of common report and alleged knowledge that Special Agent Love, of the Land Department, is the owner of one or more of said lots, and is holding the same either in his own name or that of his wife; hence he is an interested party and not competent to make an unbiased report on a protest filed against said entry."

I have the honor to report that on October 29, 1907, I proceeded to Seattle and investigated the case as far as possible in that city. I interviewed Charles D. Davis, son of Clark Davis, and secured his affidavit, a copy of which is hereto attached. I also interviewed W. G. Rogers and Walter French. They all speak in the highest terms of Special Agent Love, and from what they state I am of the opinion that the insinuations made against the said soldier's application can not be sustained by the facts. I presented the said protests to the United States attorney, who is of the opinion that prosecution under amended Revised Statute 4746 could not be maintained against Bruner, since his charges are based upon "common report and alleged knowledge." (Paragraph 5 of his protest.)

The charges against the sufficiency of the application should be investigated by a special agent upon the ground. While the affidavits hereto attached would indicate that the protests are unfounded, and are false, still the persons making said affidavits are vitally interested in the case.

Further investigation can not be made in the States. The papers transmitted by you in your letter to Special Agent Higby, dated September 30, 1907, are herewith returned.

Mr. H. R. Harriman, attorney for Clark Davis, was absent at the time of my visit to Seattle, and from letters received from him I find that he has no information in the premises.

In investigating this case I find that Clark Davis and his associates are the owners of the Katalla Petroleum and Coal Company, who are endeavoring to secure large tracts of coal lands near Katalla, Alaska, and from my conversation with young Mr. Davis there can be no doubt that the company are endeavoring to acquire more coal land than they are entitled to under the law. At the time I endeavored to secure an affidavit from young Mr. Davis in regard to their coal claims, but he refused to make any, stating that during your visit to Seattle last summer the matter had been thoroughly explained to you and

that you had advised them not to make any statement until charges had been made, in order that you would know what they had to meet. Mr. Davis had undoubtedly misquoted you in this report or they failed to give you all the facts in the case. I would therefore respectfully recommend that if it is desired that I further investigate these protests I also be authorized to thoroughly investigate the coal-land filings and entries made by the said Clark Davis and his associates.

Very respectfully,

L. R. GLAVIS,
Chief of Field Division.

Mr. GRAHAM. What is the passage that you particularly call attention to?

Mr. BRANDEIS. It is the passage which appears on page 34 in the paragraph beginning "In investigating this case I find that Clark Davis and his associates," etc.—the last paragraph.

The CHAIRMAN. The committee will consider that. I think it is unnecessary to read it. The letter will be put in evidence, and then the committee will consider it.

Mr. BRANDEIS. Very well. I desire also to call the attention of the committee to the fact that this letter was specifically acted upon by the commissioner. This part of it was not answered, but the fact that the commissioner acted upon it is shown by the fact that on December 12, 1907, the commissioner approved the entry for patent which was the subject-matter—the other subject-matter—referred to specifically in the letter, although, as a matter of fact, Mr. Glavis had recommended a further investigation.

Mr. JAMES. What was that date that he recommended the patent?

Mr. BRANDEIS. He approved the entry for patent without further investigation on December 12, 1907, although Mr. Glavis had recommended a special investigation. I merely want to call attention to that in connection with the letter.

The CHAIRMAN. There is nothing but a statement here. There is no evidence. On page 34 there is just a statement, which I gather as being that of Mr. Glavis. There is a line here—"December 12, 1907, commission approved entry for patent without further investigation." That is a statement of Mr. Glavis simply.

Mr. GRAHAM. What will the evidence be as to the approval of the entry when it comes?

Mr. BRANDEIS. We will call for that specific paper, which shows it as among the papers, and it will appear before the committee as a document.

Senator SUTHERLAND. Did I understand you to say that the approval of this entry was made after this letter was received?

The CHAIRMAN. Not this entry here.

Mr. BRANDEIS. Not the Alaska coal entry, but the soldier.

Senator SUTHERLAND. I do not quite understand you. What connection has this statement that you have called attention to, made "December 12, 1907, commissioner approved entry for patent without further investigation?" What has that to do with the letter which Mr. Glavis wrote?

Mr. BRANDEIS. It shows it is approved. This is the report. This action—the action of the commissioner—is an action taken upon and after that letter of November 12. The purpose is merely to show that this communication came to the attention of the commissioner, because it appears that he acted on a part of that letter.

The CHAIRMAN. But do you not know that the Land Office gets hundreds, and even thousands, of letters a day that are not read, and,

in the nature of the case, the commissioner can not read them unless they are specially called to his attention?

Mr. BRANDEIS. Yes, sir; that is the very reason.

The CHAIRMAN. Can you show that Commissioner Ballinger, when he was Commissioner of the Land Office, read this letter, or that it was brought to his attention?

Mr. BRANDEIS. We believe we can. That was the particular point, bearing in mind the fact which the chairman has called attention to. We believe it to be important to call attention to the fact that this letter was acted on by the commissioner personally.

The CHAIRMAN. Now, the fact that an entry was made—that that other entry was allowed—that may have been an entry that was allowed in the ordinary course of procedure in the Land Office and the commissioner himself had nothing more to do with it than he would with ordinary routine business.

Mr. BRANDEIS. That is possible.

Mr. GRAHAM. But would that not be a matter for him to show, Mr. Chairman? I would not say in defense, but it would properly come from that side.

The CHAIRMAN. What?

Mr. GRAHAM. The fact that it had been a mistake, or something that had been overlooked, it might come affirmatively from that side of the question and would not render it irrelevant to show this fact.

The CHAIRMAN. He can show the fact by the letter, but unless he follows it up by the further fact that the letter was brought to the attention of Commissioner Ballinger personally, so that he knew about it, it seems to me that he could not be charged with negligence in this case.

Mr. GRAHAM. In the ordinary transaction of his business the burden would be on him, it seems to me, to know about matters of that sort; that would be his duty, and especially in a matter of this sort that was a mooted matter about which there had been some controversy it would be particularly his duty to know about it or to issue orders that he should know, and the burden would rest on him to show that in some way or other he did not know.

Mr. BRANDEIS. Mr. Chairman, if it is necessary, I can call attention to the fact that Secretary Ballinger in his statement—

The CHAIRMAN. Which statement?

Mr. BRANDEIS. In his own statements on pages 75 and 76. It appears in the record that he did act on that letter of November 12. He denies the statement.

The CHAIRMAN. That is on what page?

Mr. BRANDEIS. At the bottom of page 75:

As stated on the same page Agent Glavis reported to me, through letter of November 12, 1907, as shown in Exhibit 4.

Then, I say, he denies the statement of Mr. Davis, what we called attention to; that is, he denies in this statement now the statement made by Mr. Davis, but he did not deny that statement at the time. That is the only point we wish to call attention to.

Senator ROOT. Mr. Brandeis, Mr. Glavis, in the letter to which you are now referring, followed his statement of what Mr. Davis said by answering it himself?

Mr. BRANDEIS. He did.

Senator Root. Mr. Glavis went on to say:

Mr. Davis had undoubtedly misquoted you in this report, or they failed to give you all the facts in the case.

Is it your idea that notwithstanding the fact that Mr. Glavis had thus discredited Mr. Davis's statement, and indicated that he did not believe it, that it was undoubtedly a misquotation, that any inferences are to be drawn against Mr. Ballinger because he did not proceed to write to his subordinate a further denial of Mr. Davis's statement; is that it?

Mr. GRAHAM. The alternative there, "or they failed to give you all the facts in the case," would seem to make it incumbent on Mr. Ballinger to answer the one or the other of those suggestions.

The CHAIRMAN. I call your attention to page 76—

Senator Root. Mr. Chairman, will you allow me to get an answer from Mr. Brandeis to my question?

The CHAIRMAN. Certainly.

Mr. BRANDEIS. That fact I called attention to in connection with a large number of other facts, no one of which would prove the case, but all of which have to be taken into consideration in coming to a final judgment as to what the ultimate facts are with which the committee will ultimately deal. It is a fact, it is a circumstance, which governs the action of the department.

Mr. OLMSTED. A fact discredited by Mr. Glavis and absolutely denied by Mr. Ballinger.

Mr. BRANDEIS. Mr. Glavis stated what any man would have stated under those circumstances, which was substantially this—phrasing it in other words:

I can not believe that you said that thing, or at least not if the facts were stated to you.

The CHAIRMAN. I desire to call your attention in this connection—and I think it comes in properly at this point—that we are here simply desiring the facts. On page 76 Secretary Ballinger states, after quoting this letter that you have referred to:

I can not state whether any specific answer was made to this letter (Exhibit 4), as the subject-matter was handled by Division P of the General Land Office. I did, however, state to Glavis in conversation that there was no truth in young Davis's statement.

Mr. BRANDEIS. That conference is the one that Mr. Glavis has already stated he wished to refer to fully. It is the conference which he has not yet testified to of December, 1907.

Mr. MADISON. Where is young Davis now?

Mr. GLAVIS. He is in the office in New York Block, Seattle, Wash.

Mr. MADISON. Is there any reason why he can not be brought before the committee and testify at first hand as to whether or not he had this conversation with the Secretary?

Mr. GLAVIS. I do not know of any reason why he should not. He is one of the coal claimants.

Mr. MADISON. And an interested party.

The CHAIRMAN. I wish you would give his name and address to the stenographer.

Mr. GLAVIS. Charles D. Davis, New York Block, Seattle, Wash.

Mr. MADISON. You regarded this statement as in effect an admission against interests; he was admitting to you something that was

against his interests—admitting a fact that a party ordinarily would not admit?

Mr. GLAVIS. No; a discreet person would not, but he is very young and very talkative. He talks more than most people do.

Mr. MADISON. Would you regard him as a person who would probably state the same facts to this committee, or would you regard him as a person under all the circumstances whose interests are such that it might cause him to state otherwise?

Mr. GLAVIS. I think his interests are such that he would state anything now. I do not know. I may be doing him an injustice, but that would be my opinion.

Mr. DENBY. Did you know him when you talked with him before?

Mr. GLAVIS. I introduced myself to him when I called that afternoon. I think that was the first time I had met him.

Mr. DENBY. Did you believe he was a truthful man then?

Mr. GLAVIS. I believed he was telling the truth in this particular.

Mr. DENBY. But you would not believe him now?

Mr. GLAVIS. I do not know that I would not believe him now. It would depend on what he said and the manner in which he said it.

The CHAIRMAN. Let me ask you a question here. What is Division P of the General Land Office?

Mr. GLAVIS. That is the Special Service Division.

The CHAIRMAN. And that is the division you were working in?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Now, is it not customary when matters come in that division that they are referred to the division that has the business in charge? Would not your letter here referred to naturally go to that division in the distribution of business in the Land Office?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. It would go there, and it would not be put up to the commissioner personally at once, would it?

Mr. GLAVIS. It depends on circumstances, as in many things they always consulted the commissioner and on others they did not.

The CHAIRMAN. By whom is the mail opened in the General Land Office?

Mr. GLAVIS. I do not know; I think they call it a registry division; I am not sure.

The CHAIRMAN. Is there not a division that governs the mail and distribution of business among the different divisions?

Mr. GLAVIS. Yes, sir; it is the mailing division, I think they call it.

The CHAIRMAN. When your letter came in, would it not, in the natural course of business of the Land Office, be referred to Division P?

Mr. GLAVIS. Yes, sir; if it related to this kind of work, and this letter did. This letter would go to the division and to the clerk whose initials are referred to in the letter—I do not know who it was; if I could see the letter I could tell what clerk it went to. [Referring to letter.] In this letter it does not show the date, but usually we always refer to the division letter and the initials.

The CHAIRMAN. But was not the character of your letter at that time such that it would naturally go to that division?

Mr. GLAVIS. Oh, yes, sir; this would have gone to Division P.

The CHAIRMAN. And unless the head of Division P or some clerk in that division brought the letter directly to the attention of the commissioner, he would not be apt to know what was in it, would he?

Mr. GLAVIS. No, sir.

Senator FLINT. Do you know whether there is anything in the files of the department that shows that letters have attached a notation to be sent to the commissioner?

Mr. GLAVIS. Sometimes there are such notations.

Senator FLINT. How are those notations made?

Mr. GLAVIS. I do not know just how they are made now, but oftentimes you find a little memorandum among the papers showing that the commissioner had been consulted, and then again lots of conferences with the commissioner relative to a particular case are not noted in the files. Any formal talk, where there is any specific action taken, would not necessarily be noted.

Senator FLINT. As far as you know, there is no system in the department which would show that a letter was brought to the attention of the head of any department, whether it was the Commissioner of the Land Office or the Secretary or anyone connected with the Land Department?

Mr. GLAVIS. No, sir; there is no set rule on that subject. I do not know of any.

The CHAIRMAN. It is now 5 o'clock, the hour of adjournment, and the committee will adjourn. We will have to have a few minutes of executive session. I notify you all that the open hearing and the taking of testimony will now be adjourned until 10 o'clock Friday morning, when Mr. Glavis and his attorneys will be in attendance.

(The committee then proceeded to the consideration of executive business, and at 5.20 p. m. adjourned until Friday, January 28, 1910, at 10 o'clock a. m.)

FRIDAY, JANUARY 28, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR DEPARTMENT AND FORESTRY SERVICE, *Washington, D. C., January 28, 1910.*

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

Present, Senators Nelson (chairman), Flint, Sutherland, Root Fletcher, and Paynter; Representatives McCall, Olmsted, Denby Madison, James, and Graham; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis.

TESTIMONY OF LOUIS R. GLAVIS—Resumed.

The CHAIRMAN. Mr. Brandeis, are you ready to proceed?

Mr. BRANDEIS. Yes, sir. As requested by the chairman, I have prepared a list of the documents and of the witnesses we desire to have produced, so far as we are able to specify at the present time.

The CHAIRMAN. Please hand that list to the clerk of the committee.

Mr. BRANDEIS. Mr. Chairman, at the last hearing the question was asked whether the decision had yet been rendered in the Wilson Coal

Company case, and Mr. Glavis and I stated that it had not been so far as we were aware. It appeared in yesterday's morning newspapers that apparently the day before a decision had been rendered in that case by Judge Hanford, restoring the lands to the United States on the ground of fraud. We have no information on that opinion, of course.

The CHAIRMAN. I will say to counsel in that respect that as soon as I noted that article in the newspaper I immediately sent a letter to the judge asking him to see the clerk of court and have him send us a copy of that decision. The letter is already on the way.

Mr. BRANDEIS. At the last hearing it will be remembered that Mr. Glavis testified that he had transmitted early in November—

The CHAIRMAN. Well, now, Mr. Brandeis, go on and examine the witness.

Mr. BRANDEIS. I merely want to call attention to the fact that there was a document, the report of November 1 of Mr. Jones, which was transmitted November 1, 1907, but that does not appear in the printed record.

The CHAIRMAN. In this book?

Mr. BRANDEIS. In this printed book; and we have therefore included that in the request for documents.

The CHAIRMAN. Whatever documents you have specified we will try and get. Proceed with the examination.

Mr. BRANDEIS. Mr. Glavis, did you during the summer of 1907 have any interview or conversation with Commissioner Ballinger in regard to the Alaska coal lands?

Mr. GLAVIS. No, sir. I spoke to his secretary one time; at least his secretary spoke to me; Mr. Carr asked me where Jones was.

Mr. BRANDEIS. There were no specific inquiries?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. What, if any, action did you take after transmitting the letter of November 12 reporting the conversation with Charles Davis?

Mr. GLAVIS. About a week after that Mr. Hoyt was down at Portland finishing his work on the Portland Coal and Coke Company cases, and we discussed it then. I told him what young Davis had stated to me and what I had heard from other people, and that the coal claimants were stating that they expected they would be able to get the patents and that no further investigation would be made, and then he was telling me that—

The CHAIRMAN. Let me understand whom this conversation was with.

Mr. GLAVIS. With Mr. Hoyt, at that time assistant United States attorney.

The CHAIRMAN. This was a conversation with Mr. Hoyt?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Was Mr. Ballinger present?

Mr. GLAVIS. No, sir. And Mr. Hoyt told me what some of the coal claimants had stated to him. The statements indicated that they were fraudulent, and so we were both discussing the best way to bring about an investigation, and we both felt that unless an investigation was made there would be a good deal of scandal if they issued patents on these fraudulent coal claims; so we discussed the advisa-

bility—he advised me that it might be best for me to go direct to Mr. Garfield and explain to him the situation. I did not want to do that; I did not know Mr. Garfield very well; I did not know how he would like it, my going over the head of my superior. And then he thought that we might bring about an investigation by going to the Department of Justice and asking them to go to the Secretary and call for the papers and ask that investigation be made, or make one themselves. Shortly after that I wrote Mr. Hoyt a personal letter—Mr. Schwartz.

Mr. BRANDEIS. What is the date of that letter?

Mr. GLAVIS. It is November 22, I think.

Mr. BRANDEIS. 1907?

Mr. GLAVIS. Yes.

Mr. BRANDEIS. That is a letter, Mr. Chairman, which does not appear in the printed record.

The CHAIRMAN. Is that in your list?

Mr. BRANDEIS. We have called for it, but we have a draft of the letter which we can produce provisionally. Will you produce that letter, Mr. Glavis?

The CHAIRMAN. Is that included in the list of documents?

Mr. BRANDEIS. It is included in the list we called for, but it is not before the President or Attorney-General.

Mr. GLAVIS. I wrote this letter on the train and made a draft of it. I do not know if it is an exact copy or not, but I am inclined to think it very near a copy.

The CHAIRMAN. I would suggest, Mr. Brandeis, that there is no occasion for that if we can get the original letter.

Mr. BRANDEIS. I think it would explain. It is a very short letter and will explain the action that was taken.

The CHAIRMAN. The original letter itself is the best evidence if we can get it, and we had better try to keep somewhere within reasonable bounds of the rules of evidence.

Mr. MADISON. Can you state that this letter is in substance the same as the letter sent?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Did you make both at the same time?

Mr. GLAVIS. Yes. I wrote them on the train and think it was my intention to send this one first, and then probably the train was going so fast I was not satisfied with the way it was written, and wrote it over again.

Mr. MADISON. But you are not dissatisfied with it so far as substance is concerned?

Mr. GLAVIS. No, it is about the same.

Mr. BRANDEIS. We might get it by to-morrow.

The CHAIRMAN. I suggest, if you desire to put it in, we will make no objection, but I suggest it would be more regular to wait and get the other letter.

Mr. BRANDEIS. I am very willing to wait.

Mr. MADISON. Will this explain a portion of his testimony to-day?

Mr. BRANDEIS. That is the reason I want to introduce it. We do not know whether it is the exact letter, and I therefore introduce a copy of it.

Mr. JAMES. Well, it is the substance of the other letter, is it?

Mr. BRANDEIS. I think it is.

Mr. MADISON. If it is in the regular course of orderly procedure of evidence, I think we ought to have it now, Mr. Chairman. It can not do any harm.

The CHAIRMAN. I just stated to Mr. Brandeis, while it is not regular, if he prefers to put it in, he can do so.

Mr. BRANDEIS. Mr. Glavis, will you read the letter.

Mr. GLAVIS (reads):

NOVEMBER 22, 1907.

DEAR SCHWARTZ: There are a number of matters which I think ought to be talked over with you. One of which are the Alaska coal cases. I am worried about this matter and would like to confide in you, because you should know all about it, even though it will no doubt pain you as much as it has me, when you hear it.

It will do me a great deal of good to talk over the Oregon situation also, meeting the clerks, etc. Wire me at Cheyenne to come in, if you possibly can do so, because I am sure you will want to learn the true situation.

Senator FLETCHER. Who was Mr. Schwartz? What position did he have?

Mr. GLAVIS. He was my superior, chief of the field work; "Division P," I think it was called at that time.

Mr. OLMSTED. What particular Alaska coal claim did you have reference to?

Mr. GLAVIS. All of them.

Mr. OLMSTED. Some eight or nine hundred?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. What next did you do in reference to this matter?

Mr. GLAVIS. The next thing I received a letter from Mr. Dennett.

Mr. BRANDEIS. Did you not before that receive a letter from Mr. Hoyt?

Mr. GLAVIS. Yes, sir; about the same time. I do not remember whether I received one or the other.

Mr. BRANDEIS. You received from Mr. Hoyt certain letters of introduction?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And what were those?

Mr. GLAVIS. A letter of introduction to the Solicitor-General, Henry M. Hoyt, and a letter of introduction to Mr. Cooley, who was then Assistant Attorney-General.

Mr. BRANDEIS. Have you those letters?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. These letters we also wish to introduce. I do not think it will be necessary to read them, but they should be in the record, the letter to Solicitor-General Henry M. Hoyt and the letter to Assistant Attorney-General A. W. Cooley.

Mr. JAMES. What are they, letters of introduction?

Mr. BRANDEIS. Letters of introduction, and in substance stating that they may rely on any statements Mr. Glavis makes.

The CHAIRMAN. Who were they by, Mr. Glavis?

Mr. BRANDEIS. Assistant United States Attorney-General Hoyt, at present attorney-general.

Mr. JAMES. Of Porto Rico?

Mr. BRANDEIS. Of Porto Rico.

(The letters of introduction referred to are as follows:)

SEATTLE, November 25, 1907.

HON. HENRY M. HOYT, *Solicitor-General,*
Washington, D. C.

DEAR HARRY: This is to introduce to your very favorable attention my friend and coworker, Louis R. Glavis, about whom I have often written to you. You can absolutely rely upon any statements he makes of either a public or a private nature.

Affectionately,

HENRY M. HOYT.

SEATTLE, November 25, 1907.

HON. A. W. COOLEY, *Assistant Attorney-General,*
Washington, D. C.

DEAR MR. COOLEY: I want to introduce to you Mr. Louis R. Glavis, chief of field division of the General Land Office. He has done much good work in this country and it is work of a high order. He will correctly inform you of the true condition of matters about which I have written to you, and you may place implicit reliance upon what he says.

Very sincerely, yours,

HENRY M. HOYT.

MR. BRANDEIS. Did you receive any reply to your letter to Mr. Schwartz?

MR. GLAVIS. I received a letter from Mr. Dennett.

MR. BRANDEIS. Under what date?

MR. GLAVIS. November 27, 1907.

MR. BRANDEIS. Will you read that letter? This also is a letter that does not appear in the printed record and papers that went to the President.

MR. GLAVIS (reads):

[Personal.]

NOVEMBER 27, 1907.

MR. L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.:

MY DEAR GLAVIS: We wired you yesterday to report in Washington, but the telegram seems to have reached Cheyenne after your departure.

This was in accordance with the suggestion in your personal letter to Schwartz, which he showed me. I am sorry that the message was too late to catch you. Is it not possible for you to write a personal letter to Schwartz, setting out what you think is the trouble? The letter would be treated very confidentially.

The situation that you write about is, of course, a vexed one, and we all feel that it needs very skillful treatment. Let Schwartz hear personally from you on the situation.

Very truly,

FRED DENNETT,
Assistant Commissioner.

THE CHAIRMAN. Was that written from Seattle or here?

MR. GLAVIS. Washington, D. C., November 27, 1907.

MR. BRANDEIS. Did you write Assistant Commissioner Dennett in reply to that letter?

MR. GLAVIS. I do not recall doing it, so I do not think I did, but I am not sure.

MR. BRANDEIS. Did you receive any telegram from him?

MR. GLAVIS. Yes. About November 7 or 8, I received a telegram calling me to report to Washington, D. C., immediately.

MR. BRANDEIS. Before proceeding to Washington, did you take any other action in regard to these Alaska coal claims?

MR. GLAVIS. Yes. I told Mr. Jones, special agent of the General Land Office, attached to my division at Portland, to write a report

setting forth just what action he had taken with reference to the investigation of the Alaska coal cases, and he did so, and that letter was dated December 2, 1907, I think.

Mr. BRANDEIS. That is the report, Mr. Chairman, which appears on page 5 of the printed record and which we desire to have introduced in evidence at this time. We also desire to introduce here the previous reports of Mr. Jones, so far as they appear in the printed documents that are now available. There is the special report of Mr. Jones, of August 10, 1907, which appears at page 25, and the special report of Mr. Jones, of August 13, 1907, which appears at page 26. And then there is the original letter of instructions directing Mr. Jones to make the investigation, the letter of June 21, 1907, which appears at page 23. I do not think it will be necessary to take the time of the committee to read these letters, but it does appear to be necessary at this time to call the attention of the committee to certain portions of those letters, because they show what action Mr. Ballinger took from time to time during that summer in guiding and directing the investigation which was made. Referring first to the original letter of instructions of June 21——

The CHAIRMAN. Page 5?

Mr. BRANDEIS. No; the original letter of instructions to Mr. Jones, which is page 23.

The CHAIRMAN. At the foot of the page?

Mr. BRANDEIS. At the foot of the page. You will see that Mr. Jones is requested to make a thorough and complete investigation of certain charges, and generally to devote himself to the exclusion of other business, and to confine his efforts to those cases until he has finally covered the whole field of investigation. That is the paragraph in the middle of the twenty-fourth page. Turn now to Mr. Jones's report at page 5. You will see in connection with his report of August 10 that he proceeded on about June 27, immediately on receipt of a letter, to take up the investigation, and almost immediately went to Alaska, and that on his return he received the request to report to Commissioner Ballinger, who was then in Seattle, and who, as appears from Mr. Ballinger's statement and from the letter, was not in Washington, and when the original instructions to Mr. Jones had been given he had already left Washington at that time. It then appears in the report of August 10, at page 25, that on July 22, 1907, Mr. H. K. Love, special agent of the General Land Office, was directed verbally by the honorable commissioner to join with Mr. Jones in the investigation of the matters herein referred to. Mr. Love then attended to the Seattle portion of the investigation and Mr. Jones to that part covered by the work done in Spokane, Wash., and Portland, Oreg.

You will also see in the next paragraph the statement:

After conferring on several different dates with the honorable commissioner it was decided that it would be sufficient for the time being to take statements from two or three persons representing each "group" of entries and in any way obtain a general idea of how far the parties taking coal lands in Alaska were complying with the requirements of the law with respect to the manner of obtaining title thereto.

And if the committee will turn to page 450 of the record, you will find at the bottom of the page among the papers produced by Mr. Schwartz the telegram signed R. A. Ballinger, and dated at Seattle,

Wash., July 23, 1907, to the Acting Commissioner of the Land Office:

Suspend action coal application Ignatius Mullen. D. S. 180 awaiting special agent's letter.

Ignatius Mullen is one of the Cunningham claimants, as you will see by the reference on the same page in Mr. Schwartz's statement about the list of Cunningham entries.

Mr. MADISON. He was a son of the receiver in the United States Land Office at Juneau, was he not?

Mr. BRANDEIS: Yes sir, he was; but I was here merely calling attention to one of the acts which Commissioner Ballinger was then doing in the direction of these very matters.

Mr. McCALL. What is the significance of D. S. 180 in that telegram?

Mr. BRANDEIS. I think Mr. Glavis will be more familiar with that.

Mr. GLAVIS. That is declaratory statement.

The CHAIRMAN. That is the principle by which the claim is identified on the books of the receiver?

Mr. BRANDEIS. Yes. D. S. 180 awaiting special agent's letter.

The CHAIRMAN. That means declaratory statement 180. That is what it is known as in the files of the Land Office.

Mr. MADISON. That is the first paper filed. When a person seeks to obtain government land or some portion of the public domain he makes a declaratory statement.

Mr. GLAVIS. Under the coal-land laws. Yes, sir.

Mr. MADISON. Also under other laws.

The CHAIRMAN. He does generally; under other land laws it amounts to his filing.

Mr. GLAVIS. They are called different names under different laws of course.

The CHAIRMAN. That is the name we got from the old law of 1841—file a declaratory statement.

Mr. BRANDEIS. And it has a bearing on this. I will ask you to turn again to the letter of Mr. Jones of December 2, appearing on page 5, where he describes somewhat more fully the action taken by Commissioner Ballinger:

I went to his office and he asked me what headway I had made with the cases. I told him that I had just begun the investigation and had taken no affidavits. He, probably believing that I was more familiar with the procedure of the office in regard to investigations of alleged frauds, left the matter to me for the time being.

Then follows:

"He took the affidavits of quite a number of persons, some of them prominent business men of Seattle, and I took several. We then went to see Judge Ballinger and told him how we were getting along. He and Love seemed to think it would not be right to disturb the title to any of these lands, upon which large sums of money had been spent and various small investors had risked their money. The judge then asked how long it would take to complete the investigation. I said that if it were carried out properly every applicant for lands would have to be interviewed, and that if I were the only person working on the case it would take six months or more, as the applicants are scattered from Nome, Alaska, to West Virginia. Judge B. then said that if the law was so constructed as to prevent a number of men, with the intention in good faith, of developing this Alaska coal land, from acquiring title to more than 640 acres, in case of corporations or companies that have expended \$5,000 in improvements, or 160 acres in cases of an ordinary association of men, he was going to see what Congress could do about the matter this winter. He said that he thought that the laws relating to coal lands in Alaska should be changed anyhow, and he wished me to get data concerning each group of entries (see my report) for said lands so as to enable him to speak intelli-

gently before Congress. I therefore went to Portland and Spokane and interviewed five or six entrymen in each town, endeavoring to get one or two of each group as requested.

I then returned to Seattle within ten days, the judge having asked me if I could return before he went to California, and found that Love had interviewed Lippy, Munday, and others.

The CHAIRMAN. Lippy and Munday, were they men belonging to the Cunningham group?

Mr. BRANDEIS. No.

Mr. GLAVIS. Lippy belonged to the Hunt group and Munday to the Stracey group.

The CHAIRMAN. Go on.

Mr. BRANDEIS (reading):

Munday, Love, and I had a conference with Judge B., in the judge's office, and Munday made a plain statement of what he intended to do.

Then follows a discussion of the report of that statement and the views of Commissioner Ballinger and others.

Mr. OLMSTED. Let me ask, Mr. Brandeis, are you putting in evidence, or arguing the case?

Mr. BRANDEIS. I am not endeavoring to read the whole letters. I want the letters to go in fully.

Mr. OLMSTED. You put in the whole letter?

Mr. BRANDEIS. Yes. I thought instead of reading each one I would call attention to a few passages. They are not very long. I want to call attention to special passages showing the participation of Commissioner Ballinger in directing this investigation, and what was being done during this period.

Mr. MADISON. That is to make a connected story and to explain his subsequent action?

Mr. BRANDEIS. That's it, precisely; and because I believe that matter had been overlooked by the Attorney-General and the President in the statement that Commissioner Ballinger's relation to this matter while he was commissioner was formal.

Mr. OLMSTED. My suggestion was merely that I thought the whole letter should go in.

Mr. BRANDEIS. I desire to put in these letters that I refer to, and I expect them to go in full and hope to save the time of the committee by not reading them.

Mr. MADISON. I understand you have offered them and they are now in evidence?

Mr. BRANDEIS. So I understand.

Mr. OLMSTED. He has not offered them; he has only called attention to disjointed parts of them.

Mr. MADISON. You are simply calling our particular attention to them?

Mr. BRANDEIS. Yes, sir; I have introduced these four documents that I have spoken of.

Mr. GRAHAM. You read the word "constructed" as "construed." That was a typographical error, I presume? I presume that is "constructed?"

Mr. BRANDEIS. Yes, sir.

Mr. GRAHAM. It would make a material difference.

Mr. BRANDEIS. I also wish to call attention to the fact appearing in this same letter, the next paragraph.

The CHAIRMAN. In the letter on page 5?
Mr. BRANDEIS. Page 6, the last paragraph:

When I handed in my report to the judge for his inspection (referring to the report of August 10) and information, he said that I had done very well with the investigation. I never heard anything more from the General Land Office as to the disapproval or approval of the report, and so I concluded that my action in the premises was satisfactory.

And also the last sentence, in which he says:

I have reiterated and protested by letter that the investigation of these entries should not be stopped, and I trust that you may have the duty of carrying out the investigation to its completion and would like to assist you in the work.

The CHAIRMAN. Let me ask for my own information of either you or Mr. Glavis: Was not there an earlier report from Mr. Jones on these coal claims, an earlier report than this?

Mr. BRANDEIS. Than of December 2?

The CHAIRMAN. Yes.

Mr. BRANDEIS. There was one other report, namely, the report or affidavit, in whatever form it was. I have not seen it. That was dated November 1, 1907, and transmitted by Mr. Glavis, who, in the meantime, had become his superior officer as head of that division. It was transmitted under date of November 5. That is the paper I referred to this morning as not being in Senate Document No. 248, and that we had called for.

Mr. JAMES. Where is Mr. Jones, who wrote this letter?

Mr. GLAVIS. He is in Portland, Oreg., special agent.

Mr. BRANDEIS. And he is one of the witnesses we have named in the list we have presented that ought to be called before the committee. (The letters introduced in evidence by Mr. Brandeis are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., December 2, 1907.

Mr. LOUIS R. GLAVIS,
Chief of Field Division No. 1, Portland, Oreg.

DEAR SIR: In compliance with your verbal request of this date, I herewith outline to you the different steps taken, conversations had with parties, not mentioned in my report on the case, and instructions, verbal, received from the honorable Commissioner of the General Land Office, R. A. Ballinger, relative to the investigation of the alleged fraudulent coal-land entries in Alaska.

I received instructions about June 27, 1907, from the General Land Office to go to Alaska and make investigation into certain complaints touching the entries of coal lands in that district. I went to Juneau, Alaska, and took a list of all entries that have been recorded in the office at that point and up to the date of my investigation. Returning to Seattle I was told that Judge Ballinger wished to see me about the coal-land matters. I therefore went to his office and he asked me what headway I had made with the cases. I told him that I had just begun the investigation and had taken no affidavits. He, probably believing that I was more familiar with the procedure of the office in regard to investigations of alleged frauds, left the matter to me for the time being.

About this time I had met Mr. H. K. Love, special agent, located in Alaska, and I took him to Judge Ballinger's office and introduced him to the Judge. Mr. Love was desirous of prolonging his stay in Seattle, for family reasons, and it was agreed that he should assist in the investigation of these entries. He took the affidavits of quite a number of persons, some of them prominent business men of Seattle, and I took several. We then went to see Judge Ballinger and told him how we were getting along. He and Love seemed to think that it would not be right to disturb the title to any of these lands, upon which large sums of money had been spent and various small investors had risked their money. The Judge then asked how long it would take to complete the investigation. I said that if it were carried out properly, every applicant for lands would have to be interviewed and that if I were the only person

working on the case, it would take six months or more, as the applicants are scattered from Nome, Alaska, to West Virginia. Judge B. then said that if the law was so constructed as to prevent a number of men, with the intention, in good faith, of developing this Alaska coal land, from acquiring title to more than 640 acres, in case of corporations or companies, that have expended \$5,000 in improvements, or 160 acres in cases of an ordinary association of men, he was going to see what Congress could do about the matter this winter. He said that he thought that the laws relating to coal lands in Alaska should be changed anyhow, and he wished me to get data concerning each group of entries (see my report) for said lands so as to enable him to speak intelligently before Congress. I therefore went to Portland and Spokane and interviewed five or six entrymen in each town, endeavoring to get one or two of each group, as requested.

I then returned to Seattle, within ten days, the judge having asked me if I could return before he went to California, and found that Love had interviewed Lippy, Munday, and others. Munday, Love, and I had a conference with Judge B., in the judge's office, and Munday made a plain statement of what he intended to do. He said, in so many words, that he intended to get as much coal land as possible. He admitted that he had other people file on lands for him, and in one or two instances, if I remember correctly, he had supplied the money himself. I recollect that Munday and I had quite an argument at the time. He said that he wanted to go about this matter in the proper way and did not want to get anything illegally, and that he did not think that he was getting anything illegally. I said that if the procurement of persons who did not have money to make the payments required by law and whose rights were merely being used by Munday and his associates for their own gain was proceeding in a legal manner, then my knowledge of the spirit of all land laws was very defective, as I supposed that one could not barter away his rights or give another an interest therein before getting title to the land.

The judge was asked by Munday to say whether or not his scheme for getting these lands was legal, but the judge refused to commit himself.

Love did not wish to appear to be very active in this investigation, and the judge appeared to be in a hurry to have me get through with the investigation, which I regarded as a preliminary one; so I therefore made my report on the matter and returned to Portland, Ore.

There was no concealment of facts in any instance during my investigation by the applicants, except in the case of a man in Spokane who was engineering the Doughten deal. I do not recollect his name, but he denied that he had had anything to do with the matter. All the other applicants came out boldly in their statements. Those who were financing a company or had stock in some organization, based upon this coal land, frankly told me what they expected to do with the land and answered every other question that I asked with equal frankness.

When I handed in my report to the judge for his inspection and information he said that I had done very well with the investigation. I never heard anything more from the General Land Office as to the disapproval or approval of the report, and so I concluded that my action in the premises was satisfactory. I have reiterated and protested by letter that the investigation of these entries should not be stopped, and I trust that you may have the duty of carrying out the investigation to its completion and would like to assist you in the work.

Very respectfully,

HORACE TILLARD JONES,
Special Agent, G. L. O.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., June 21, 1907.

Mr. HORACE T. JONES,
Special Agent, General Land Office, Portland, Ore.

SIR: October 6, 1905, Special Agent H. K. Love submitted to this office a letter setting out various schemes under which coal lands were being entered in Alaska. With said letter he submitted copy of an affidavit made by David Lawrence White, dated the 6th of September, 1905, at Catalla, Alaska.

Under dates of November 9, 1905, and March 20, 1906, Mr. M. S. Duffield, writing from Valdez, Alaska, setting forth with some particularity that Mr. Frank Watson, at Seattle, Wash., as representative of certain Chicago capitalists by that name, had taken steps to secure 13,280 acres of Chickaloon Creek coal lands on the Matanuska River, Alaska; that in making the applications for these lands, 83 names had been used. Some of these names are alleged to be people living in Seward and others were Seattle laborers. The effect of the statements contained in Mr. Duffield's letters is

that these parties were engaged in a criminal conspiracy denounced in section 5440, Revised Statutes, the object of which conspiracy was to illegally acquire title to coal lands contrary to the statutes in relation thereto. From the affidavit of David L. White, above referred to, it appears that A. H. Stracey, local manager and representative of the Pacific Oil and Coal Company (Limited), commonly known locally as the "English Company," was indicated as being engaged in hiring persons, some of whom were designated in his affidavit by name, for the purpose of entering each 160 acres of coal lands for the benefit of said company, and they were to receive for making said locations the sum of \$100, and they were also paid at the rate of \$2.25 a day for doing assessment work upon such lands.

I have attached to this letter a copy of a letter of Mr. Love of October 6, 1905; the affidavit of David L. White of September 6, 1905, and the letters of Mr. Duffield of November 25, 1905, and March 2, 1906, and a description of the coal declaratory statements made by parties for lands in that locality so far as they appear on record in this office, all of which may be of service to you in your investigations. In addition thereto, I inclose you copies of letter of Henry R. Harriman, attorney at Seattle, Wash., dated October 10, 1905, to Mr. Love; a copy of letter of inquiry of November 14, 1906, from George F. Mundy, Seattle, together with a copy of the reply of this office to Mr. Mundy dated November 30, 1906; also a copy of a letter of this office of December 11, 1905, to Special Agent Love, which last-mentioned series of inclosures may or may not be of importance in your investigation.

This office also calls attention to the fact that these complaints are about two years old, and if there has been incurred a criminal liability the matter must be presented to a United States grand jury within three years of the last overt act taken with a view of consummating the purpose of the conspiracy.

It is desired by this office that you make a thorough, complete, and energetic investigation of the charges contained in Mr. Duffield's letter and those referred to in Mr. White's affidavit, and any other like violations of the law in reference to coal entries in that locality. This you will do to the exclusion of any other business, and you will confine your efforts to these cases until such time as you have thoroughly covered the whole field of investigation.

As a preliminary to your work it is suggested that you give a few days' time to a consultation of the decisions as found in the Federal and Supreme Court reports upon the question of conspiracy under section 5440, and perjury and subornation referred to, and that you will also read and take note of those court cases which have particular application to coal lands. Among them is the case of *The United States v. The Trinidad Coal and Coke Company*, reported in 137 U. S. After you have made yourself thoroughly conversant with the laws it is alleged these parties have violated, and with the decisions of the courts as to what state of facts constitute such violations, you will proceed with your investigation in the field. In making such investigation you will endeavor to interview all of the alleged fraudulent or dummy entrymen and procure from them affidavits setting up the true state of facts under which these entries were made. You are particularly charged with the necessity of securing, in affidavit form, whatever evidence you expect subsequently to be used to advantage on behalf of the Government, likewise any evidence which tends to show the good faith of any particular transaction. In making your investigations you will also bear in mind the fact that criminal liability in these cases expires within three years from the date of the crime of perjury or subornation of perjury and from the date of the last overt act in the consummation of any conspiracy, and you will therefore give preference in time in examination where it is necessary by reason of such statute.

You have been selected to make this examination for the reason that this office believes that you have the necessary ability and integrity, and you are authorized to travel to such points in Alaska or Western States as may be necessary in order to cover the investigation. It will probably be necessary for you to examine the records in the land office at Juneau.

From time to time, as this investigation progresses, and as you take affidavits, you will submit preliminary reports informing this office of the progress you are making and attach thereto copies of the affidavits and other evidence secured by you.

In view of the fact that this work will require your presence in Alaska at different times and will necessitate more than the ordinary expenses upon your per diem account, this office will, upon receipt of a wire from you that you have entered upon this investigation, submit to the department a recommendation that your salary be increased per annum.

Very respectfully,

FRED DENNETT,
Acting Commissioner.

(Morris F. Duffield's present address is box 284, Ely, Nev.)

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Seattle, August 10, 1907.Honorable COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By letter dated June 21, 1907, Special Agent Horace T. Jones was instructed to make a thorough and complete investigation of certain charges contained in the letter of M. S. Duffield, of Valdez, Alaska, affecting the question of the bona fides of certain applications to enter the coal lands of Alaska.

Special Agent Jones on June 27, 1907, addressed a letter to M. S. Duffield, then said to be at Ely, Nev., asking Mr. Duffield for further particulars regarding the subject-matter of his said charges. The answer of Mr. Duffield, dated July 17, 1907, is hereto attached and marked "Exhibit A."

After a trip to the United States land office at Juneau, Alaska, Mr. Jones came to Seattle, Wash., with a complete list of all coal-land filings in the United States land office at Juneau made to the date of Mr. Jones's departure for Seattle. The said application of filings, number 523, 33 of which, in the group hereinafter referred to as the "Cunningham group," have had entry made upon them.

On July 22, 1907, Mr. H. K. Love, special agent of the General Land Office, was directed verbally by the honorable commissioner to join with Mr. Jones in the investigation of the matters herein referred to. Mr. Love attended to the Seattle portion of the investigation and Mr. Jones to the part covered by the work done in Spokane, Wash., and Portland, Oreg.

After conferring on several different dates with the honorable commissioner it was decided that it would be sufficient for the time being to take statements from two or three persons representing each "group" of entries and in any way obtain a general idea of how far the parties taking coal lands in Alaska were complying with the requirements of the law with respect to the manner of obtaining title thereto.

Since beginning the investigation we have taken about 25 statements from the different persons representing the aforesaid "groups," and the said statements are hereto attached and made a part of this report and will be enumerated herein by numbers of exhibits referring to said groups:

M. A. Green group.—See Exhibits Nos. 1 to 7, inclusive.

E. J. Rathbone group.—See Exhibits Nos. 8 and 9.

C. H. Doughton group.—See Exhibits 10, 11, and 12.

J. R. Young group.—See Exhibits 13 and 14.

W. N. Letcher group.—See Exhibit No. 15.

Frank Watson group.—See Exhibit No. 16.

James T. Royles group.—See Exhibit No. 17.

Cherum group.—See Exhibit No. 18.

A. H. Steacy group.—See Exhibit No. 19 and Exhibit 20.

C. Cunningham group.—See Exhibit No. 21.

James Wardell group.—See Exhibit 22 and Exhibit 23.

Christopher and Simmonds group.—See Exhibit No. 24.

A. B. Hunt group.—See Exhibit No. 25.

The "groups" represented by the following agents will not be reported on in this report, for the reason that the individuals making up the said groups reside without the vicinity of Seattle, Portland, or Spokane; and it was thought that a sufficient amount of data could be secured from these persons who were nearer headquarters to enable the agents in this investigation to make a showing in the matter that would result in further investigations of all the entries or applications.

The "groups" referred to above are:

L. A. Thurston group.

John W. Hartline group.

Torger A. Feed group.

Robert A. Foster group.

A. E. Dickerman group.

George Harkrader group.

A. F. Runnells group.

N. E. Smith group.

In addition to the foregoing groups there are a number of filings which appear to have been made by the individual person.

While taking the statement of J. R. Young, of Seattle, Wash., he said that the Christopher claims were in a pool or combine, and that a notary public in Alaska, named Hamilton, had made out filing papers and powers of attorney in the names of persons who did not realize that their names were being used for that purpose and knew nothing of the matter. The Christopher group and the Simmonds group appear to be under the same management.

In a search for one S. R. Blonger, located by George Simmonds, agent, it was learned that he, Blonger, had moved to Denver, Colo., but his street address could not be found. A Mrs. Dickson, with whom Blonger formerly roomed here in Seattle, Wash., a negress, stated that she had heard Blonger talk of his coal claim; that he belonged to some sort of club; and that all the members of the club had coal claims and handled them on shares. These claims are in Alaska; that Blonger went down three or four times to sign some papers in connection with his coal claim.

E. House, located by E. G. Rathbone, agent, stated that he knows nothing of his claim more than that he has paid about \$100, and that he will get stock from the Anglo-American Coal and Coke Company after a while; that George H. Hill, Fred Stanley, and H. L. Pittcock are at the head of the said coal company; that he trusted the entire management of the coal claim with the aforesaid gentlemen.

Ignatius Mullen, son of the receiver of the United States land office at Juneau, Alaska, was located on a coal claim in Alaska by Clarence Cunningham. Mullen, senior, states that he has put about \$3,600 into his son's claim, but I think he claims that this money is by way of a loan to said son. A statement will be taken from the son when he can be found, and one from Mullen, senior, when Mr. H. K. Love, special agent, returns to Juneau, which will establish the good or bad faith of this coal-land filing of Ignatius Mullen.

A complete list of all filings made up to the time of the departure of Special Agent Jones from Juneau, Alaska, about July 17, 1907, will be forwarded in a short time with as many street addresses of locators as can be secured.

In view of the fact that the majority of the statements taken in this matter seem to indicate that the lands which are subject to this investigation appear to have been taken under, to say the least, a misapprehension of the rights of the parties to combine and locate together under one financial arrangement, it is respectfully recommended that a strict investigation be further made of each and every locator's connection with other locators in the groups above mentioned.

This is particularly necessary in the matter of the locations made by Christopher, Simmons, Doughton, Stracey, and Chezum.

Respectfully,

HORACE TILLARD JONES,
Special Agent, General Land Office.

EXHIBIT 3.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Portland, Oreg., August 13, 1907.

HONORABLE COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Referring to my investigation of certain coal-land applications for land in Alaska, I have the following list of names with the city and state address of the applicant for use by your office in a further investigation of frauds in coal lands in Alaska:

Spokane, Wash.

Applicant's name.	D. S. No.	Name of agent.
Anderson, Andrew.....	498	Doughton, C. R.
Boyd, Geo. W.....	496	Do.
Jacobs, Fred.....	491	Do.
Oehler, Chris D.....	492	Do.
Oehler, Arthur J.....	493	Do.
Oehler, John E.....	494	Do.
Tetherill, King.....	483	Do.
Bing, Christina F.....	478	Do.
Roetscher, Wm. F.....	460	Do.
Brown, Wilhemina.....	487	Do.
Capell, Walter D.....	469	Do.
Coffin, Geo. H.....	465	Do.
Dueber, Jos.....	466	Do.
Dunn, Wm. L.....	474	Do.
Evans, Mrs. Francis A.....	461	Do.
Gilmill, Louis C.....	481	Do.
Hayhurst, Laura.....	489	Do.
Kalez, Martin J.....	460	Do.
Loomis, A. Inah I.....	490	Do.
Ludwig, Carrie.....	472	Do.
Martin, Samuel L.....	475	Do.
Moor, Arthur H.....	497	Do.
Mudgett, Geo.....	462	Do.

Spokane, Wash.—Continued.

Applicant's name.	D. S. No.	Name of agent.
Mueller, Pauline.....	467	Doughton, C. R.
Mueller, Godfred H.....	482	Do.
Murphy, Jos. M.....	463	Do.
Palmer, Grant.....	488	Do.
Peck, Milton L.....	468	Do.
Peters, Lincoln M.....	477	Do.
Peterson, Cristina.....	476	Do.
Peterson, Lawrence.....	470	Do.
Sengfelder, Fred.....	471	Do.
Sengfelder, John.....	473	Do.
Wolferman, Geo. J.....	495	Do.
Wolferman, Martin.....	464	Do.
McIntyre, Mrs. Mabel B.....	198	Chezum, S. C.
Murphy, T. Waldo.....	197	Do.
Watson, Frank.....	198	Do.
Burdridge, Fred.....	191	Cunningham, C.
Campbell, A. B.....	161	Do.
Cunningham, Jno. G.....	175	Do.
Doneen, Michael.....	163	Do.
Finch, Jno. A.....	171	Do.
Jones, Arthur D.....	183	Do.
Mason, Fred H.....	185	Do.
Neal, Jos. H.....	182	Do.
Neal, Reginald K.....	186	Do.
Riblett, Byron C.....	167	Do.
Sweeney, Chas.....	165	Do.
Baty, T. J.....	521	Thurston, L. A.
Laberee, O. G.....	372	Watson, Frank.
Laberee, R. J.....	374	Do.
Moore, Harvey S.....	369	Do.
Strickland, Rem.....	376	Do.

The following addresses are in different parts of the State of Washington:

Applicant.	D. S.	Agent.	Address.
Robinson, Knight.....	496	Doughton, C. H.....	Deer Park, Wash.
Cherum, F. O.....	195	Cherum, S. C.....	Pierce Co., Wash.
Cherum, L. E.....	149	do.....	Tacoma, Wash.
Baker, W. W.....	173	Cunningham, C.....	Walla Walla, Wash.
Clark, Jas. F.....	26	(?)	Clallam, Wash.
Collins, H. W.....	164	Cunningham, C.....	Rockford, Wash.
Dahlgren, Walfred.....	120	(?)	Wilsoncreek, Wash.
Davidson, Fred C.....	166	Cunningham, C.....	Oaksdale, Wash.
Doyle, Miles.....	19	(?)	Sidney, Wash.
Halsted, Geo. S.....	25	(?)	Tacoma, Wash.
Doyle, Patrick.....	18	(?)	Sidney Wash.
Leed, B. F.....	103	Green, M. A.....	Lakeside, Wash.
Leed, Belle.....	101	do.....	Do.
Leeper, Leon D.....	23	(?)	Ballard, Wash.
Lindsley, A. L.....	188	Young, J. R.....	Bridgefield.
Long, Dare.....	484	Doughton, C. H.....	Deer Park, Wash.
Marterson, Michael L.....	218	Christopher, C.....	Grand Mound, Wash.
Miller, Matt.....	15	(?)	Ballard, Wash.
Moore, Frank A.....	176	Cunningham, C.....	Walla Walla, Wash.
Moore, Miles C.....	172	do.....	Do.
Morrow, M.....	85	Green, M. A.....	North Bend, Wash.
Patterson, Milo.....	485	Doughton, C. H.....	Plaza, Wash.
Peters, Jas.....	21	(?)	Reedville, Wash.
Rothwell, Wm.....	6	(?)	Tacoma, Wash.
Rouse, Alvin G.....	31	(?)	Ballard, Wash.
Smith, Minnie V.....	350	(?)	Kettle Falls.
Swanson, Swan.....	119	Feed, Torger A.....	Ballard, Wash.
Willoughby, Adeline C.....	515	Willoughby, O. L.....	735 Wilbert street, Port Townsend, Wash.
Willoughby, F. A.....	513	do.....	Do.
Willoughby, Jos. K.....	8	do.....	Do.
Willoughby, Sarah C.....	514	do.....	Do.
Cable, Harry E.....	390	Foster, R. A.....	1068 Washington street, Oakland, Cal.
Christopher, Thomas.....	228	Christopher C.....	San Diego, Cal.
Thurston, A. L.....	622	Thurston, L. A.....	Los Angeles, Cal.
Poston, N.....	124	Young, J. R.....	San Francisco, Cal.
Christopher, E. A. D.....	222	Christopher, C.....	Los Angeles, Cal.
Patchild, Emily C.....	363	Foster, R. A.....	1068 Washington street, Oakland, Cal.
Patchild, Geo. F.....	389	do.....	Do.
Foster, Katherine L.....	364	do.....	707 West Twenty-eighth street, Los Angeles, Cal.
Foster, Mary R.....	362	do.....	Do.

Applicant.	D. S.	Agent.	Address.
Robinson, M. L.	386	Foster, R. A.	1008 Washington street, Oakland, Cal.
Roesner, Henry W.	386	do.	Do.
Smith, Ella W.	388	do.	Los Angeles, Cal.
Wells, Edwin M.	220	Christopher, C.	Oakland, Cal.
White, R. A.	104	Green, M. A.	Los Angeles, Cal.
White, Carrie.	82	do.	Do.
White, Mrs. Anna.	106	do.	Do.
Thompson, Georgiana.	106	do.	Do.
Soofield, Andrew L.	157	Cunningham, C.	1044 West Forty-fifth street, Los Angeles, Cal.
Jones, Minerva F.	457	Green, M. A.	Pasadena, Cal.
Goodwin, W. L.	444	do.	Los Angeles, Cal.
Barber, R. S.	259	Stracy, A. H.	San Jose, Santa Clara County, Cal.
Barber, E. L.	260	do.	Do.
Allsky, Lucille.	366	Green.	Santa Cruz.
Allsky, Chas.	365	do.	Do.
Dickerson, Addie M.	453	Dickerman, A. E.	Winsted, Conn.
Dickerson, Frank A.	452	do.	Do.
Dickerson, Nancy M.	450	do.	Do.
Mayher, Josephine C.	499	Green, M. A.	Bridgeport, Conn.
Wyman, Walter.	454	do.	Washington, D. C.
Wyman, Arthur.	459	do.	Do.
McIlhorne, Arthur J.	455	do.	Do.
Powell, Jno. H.	456	do.	Do.
Capp, Frank N.	384	Foster, R. A.	362 East Fifty-fifth street, Chicago.
Deulour, Frank D.	407	do.	R. 1105-119 Monroe street, Chicago.
Haeden, Thos. M.	352	do.	5762 Madison avenue, Chicago.
Howard, N.	402	do.	R. 1105-119 Monroe street, Chicago, Ill.
Hyde, Arvene S.	385	do.	4204 Oakenwald avenue, Chicago.
Jones, Rich. E.	387	do.	126 Winthrop street, Chicago.
Kelly, Fred T.	152	Chezum, S. C.	Chicago or Baker City, Ill.
Leyans, Fred B.	396	Foster, R. A.	61 Plymouth street, Chicago.
McCready, H. A.	381	do.	5919 Wabash avenue, Chicago.
McFarlane, F. L.	401	do.	362 East Fifty-seventh street, Chicago.
Maxwell, Frank S.	381	do.	4058 Ridge avenue, Chicago.
Moore, Levering.	405	do.	R. 1105-119 Monroe street, Chicago.
Poole, Wm. H.	406	do.	61 Plymouth street, Chicago.
Nolan, P. M.	404	do.	R. 1105-119 Monroe street, Chicago.
Rundell, Miller H.	404	do.	Do.
Root, F. J.	399	do.	Do.
Shaw, Jos. J.	383	do.	32 Walton place, Chicago.
Skinner, Harvey E.	408	do.	R. 1105-119 Monroe street, Chicago.
Shoemaker, Chas. W.	403	do.	357 West Twenty-third place, Chicago.
Trumbull, Chas.	398	do.	R. 1105-119 Monroe street, Chicago.
Thomas, Burton.	397	do.	Do.
Appleton, H. M.	217	Christopher	Amboy, Ill.
Eedient, Sarah E.	231	do.	Sublette, Ill.
Christopher, Geo. W.	230	do.	Amboy, Ill.
Wright, H.	223	Watson, Frank.	Chicago, Ill.
Wood, Chas. B.	335	do.	Do.
Wallenberg, H.	298	do.	Do.
Wandtke, Walter F.	338	do.	Do.
Walters, L. C.	318	do.	Do.
Vivian, E. H.	286	do.	Do.
Ver Mehr, Jno. M.	373	do.	Do.
Tuthill, Lolo W.	324	do.	Do.
Turpink, E. A.	287	do.	Do.
Tromell, Ernest H.	317	do.	Do.
Thompson, F. R.	294	do.	Do.
Thompson, F. L.	294	do.	Do.
Thompson, C. E.	289	do.	Do.
Spurr, B. H.	328	do.	Do.
Seward, J. F.	315	do.	Do.
Seward, Geo. M.	336	do.	Do.
Schults, R. C.	326	do.	Do.
Randall, E. M.	276	Green, M. A.	Do.
Peterson, L. W.	325	Watson, Frank.	Do.
Oakley, Horace S.	291	do.	Do.
Noe, Elzer C.	410	do.	Do.
Naumes, J. P.	288	do.	Do.
Musson, Harry.	337	do.	Do.
Munroe, Fayette S.	332	do.	Do.
Mullen, Arthur J.	292	do.	Do.
Miller, Geo. W.	334	do.	Do.
Merlles, F. C.	320	do.	Do.
Merlles, C. M.	280	do.	Do.
McCabe, Jos. E.	329	do.	Do.
Knight, F. C.	319	do.	Do.
Kinahan, Reverend.	322	do.	Do.
Kilman, W. A.	296	do.	Do.
Just, Frank H.	295	do.	Do.
Hartline, Willis A.	353	Hartline, Jno. W.	Anna, Ill.
Hartline, Jasper L.	380	do.	Do.
Hartline, Homer G.	445	do.	Do.
Hartline, E. Ella.	351	do.	Do.
Hartline, C. W.	377	do.	Do.
Hartline, Benj. F.	378	do.	Do.

Applicant.	D. S.	Agent.	Address.
Griffin, Wm. V.....	411	Watson, Frank.....	Chicago, Ill.
Gerraghty, K. L.....	342	.....do.....	Do.
Gall, E. S.....	295	.....do.....	Do.
Frost, A. C.....	412	.....do.....	Do.
Frommel, E. H.....	317	.....do.....	Do.
Findley, H. M.....	316	.....do.....	Do.
Drum, A. L.....	333	.....do.....	Do.
Drake, Lee.....	330	.....do.....	Do.
Des Jardines, E. L.....	339	.....do.....	Do.
Davidson, S. H.....	321	.....do.....	Do.
Davidson, A. Allen.....	311	.....do.....	Do.
Cook, Wm. C.....	293	.....do.....	Do.
Coale, Henry K.....	240	.....do.....	Do.
Casper, Oscar H.....	379	Hartline, Jno. W.....	Anna, Ill.
Arnold, Bion J.....	300	Watson, Frank.....	Chicago, Ill.
Allen, Fred H.....	327	.....do.....	Do.
Scott, Lee.....	438	.....do.....	Do.
Richey, Webster S.....	441	.....do.....	Do.
Jewett, Fred E.....	415	.....do.....	Do.
Hoy, E. R.....	297	.....do.....	Do.
Hageman, M. L.....	439	.....do.....	Do.
Doran, M. A.....	442	.....do.....	Do.
Clark, Lewis A.....	416	.....do.....	Do.
Burt, Frank E.....	414	.....do.....	Do.
Bingham, A. L.....	417	.....do.....	Do.
Ball, W. C.....	443	.....do.....	Do.
Ball, Geo. A.....	299	.....do.....	Do.
Thurston, E. E.....	523	Thurston, L. A.....	Union, Me.
Shoemaker, Jennie.....	226	Christopher, C.....	Adrian, Mich.
Fitzgerald, Joseph.....	413	Watson, Frank.....	Minneapolis, Minn.
Lincoln, Chas. F.....	440	.....do.....	Hennepin Co., Minn.
Asbjornson, Elsie.....	121	Torger, Fred A.....	Alpena, Mich.
Dougherty, Chas.....	151	Chezum, S. C.....	Goldfield, Nev.
Dickerman, Ellis R.....	451	Dickerman, E. A.....	Horsehead, N. Y.
Jordan, Walter R.....	409	Foster, R. A.....	No. 11 Broadway, New York, the Apex Equip- ment Co.
Wick, Henry.....	179	Cunningham, C.....	Elyria, Ohio.
Warner, W. H.....	153	.....do.....	Williamson Building, Cleveland, Ohio.
Miller, Wm. E.....	174	.....do.....	Elyria, Ohio.
Steel, Jno. A.....	3	.....do.....	Pittsburg, Pa.
Hartline, H. E.....	355	Hartline, J. W.....	Dallas, Tex.
Tierman, A. K.....	132	Young, J. R.....	Salt Lake, Utah.
Young, W. H.....	189	.....do.....	Linden, W. Va.
Stracey, A. H.....	27	.....do.....	London, England.
Yeates, J. H.....	261	Stracey, A. H.....	Kitsap Co., Wash.
Gray, Chas. D.....	11	(?)	(?)
Abernathy, W. S.....	187	Green, M. A.....	(?)
Tallefson, Lars.....	143	(?)	(?)
Thurston, L. A.....	145	(?)	(?)
Rouss, Thomas.....	191	(?)	(?)
Nowell, F. D.....	114	(?)	(?)
MacDonald, D. L.....	519	(?)	(?)
Lorentson, Martin.....	137	(?)	(?)
Jessen, A. F.....	144	(?)	(?)
Johnson, Richard A.....	56	Harkrader, Geo.....	(?)
Hudson, N. R.....	511	(?)	(?)
Hughes, E. H.....	146	Chezum (?)	(?)
Garvey, Dan D.....	345	(?)	(?)
Dickerman, A. E.....	346	(?)	(?)
Des Rocher, O. F.....	116	(?)	(?)
Davis, A. L.....	147	Chezum (?)	(?)
Decker, Jay M.....	155	Harkrader, Geo.....	(?)
Cunningham, K. J.....	344	Cunningham, C.....	Wallace, Idaho.
White, Harry.....	189	.....do.....	Do.
Page, Alfred.....	184	.....do.....	Wardner, Idaho.
Moore, Fred Cushing.....	188	.....do.....	Wallace, Idaho.
Jones, Orville D.....	154	.....do.....	Do.
Johnson, Frank F.....	178	.....do.....	Do.
Jenkins, Francis.....	155	.....do.....	Moscow, Idaho.
Cunningham, C.....	156	.....do.....	Wallace, Idaho.
Batting, Will H.....	170	.....do.....	Do.
Morrison, H. J.....	91	Green, M. A.....	561 Hoyt street, Portland.
Cornelius, C. W.....	129	Young, J. R.....	718 Wayne street, Portland.
Hurlbut, W. H.....	130	.....do.....	Portland.
Lindsley, A. A.....	127	.....do.....	Do.
Lindsley, C. T.....	128	.....do.....	Do.
Bruneau, C. T.....	201	Christopher, C.....	Do.
Alisky, C. A.....	109	Green, M. A.....	251 Washington street, Portland.
Alisky, C. F.....	259	.....do.....	Do.
Brown, D. H.....	261	.....do.....	104 Fourth street, Portland.
Cartwright, C. M.....	363	.....do.....	Room 506 McKay Building, Portland.
Crosman, A. B.....	83	.....do.....	215 Seventh street, Portland.
Crosman, L. M.....	105	.....do.....	Room 506 McKay Building, Portland.
Donohoe, C. R.....	360	.....do.....	Portland, Ore.
Donohoe, H. W.....	458	.....do.....	Do.

Applicant.	D. S.	Agent.	Address.
Donohoe, S. T.	356	Green, M. A.	Portland, Ore.
Hammond, I. B.	90	do.	128 Grand avenue, Portland.
Lindsley, M. P.	277	do.	Portland.
McFarland, E. B.	236	do.	506 McKay Building, Portland.
McFarland, M. E.	357	do.	Do.
Metschan, Phil.	99	do.	Imperial Hotel, Portland.
Morrow, F. A.	112	do.	Wamlc, Ore.
Pittcock, H. L.	284	do.	Oregonian Building, Portland.
Prescott, C. H.	102	do.	Portland, Ore.
Schmeer, Fred.	362	do.	Pendleton, Ore.
Watson, Mrs. J. F.	110	do.	Portland, Ore.
Weldler, Geo. W.	278	do.	618 Lovejoy street, Portland.
Woodard, C. H.	280	do.	Portland, Ore.
Barber, S. J.	446	Rathbone, E. J.	Do.
House, E.	448	do.	Portland, 138 Fourth street.
Mack, J. G.	449	do.	Portland, 83 Third street.
Rogers, J. R.	447	do.	Portland, 90 1st street.
Clark, Lewis G.	503	Willoughby, C. L.	Portland, Ore.
Eshleman, J. F.	502	do.	Do.
Grant, H. N.	505	do.	Portland, 228 Chamber of Commerce.
Kopf, Chas. H.	504	do.	Portland, Ore.
Mason, A. B.	506	do.	Fourth and Morrison, Portland.
Page, F. H.	500	do.	120 Front street, Portland.
Stanley, F. G.	501	do.	801 Chamber of Commerce, Portland.
Booth, Henry B.	29	(?)	Grants Pass, Ore.
Hartline, E. F.	354	Hartline, J. W.	Rossland, Kootenai Co., British Columbia.
Anderson, Robt.	352	do.	Do.
Blair, Joseph.	352	Simonds, Geo.	Seattle, Wash.
Blonger, S. R.	424	do.	Seattle, First avenue, corner Hames.
Brooke, Frank.	419	do.	Seattle, Wash.
Brown, B. S.	304	do.	Seattle, 518 Pike street.
Cosgrove, Ed.	429	do.	Seattle, Wash.
Cox, Fred R.	436	do.	Do.
Deaver, Jas.	437	do.	Do.
Devere, Wm.	306	do.	Do.
Dunlap, Jas. W.	425	do.	Seattle, 1023 Union street.
Edwards, Alfred.	312	do.	Seattle, 500 John street.
Fredlund, Jos. E.	311	do.	Seattle, 713 Twenty-seventh street.
Gates, Oldham.	422	do.	Seattle, 218 Fourth avenue.
Gibson, H. E.	430	do.	Seattle, Wash.
Guy, G. O.	302	do.	Do.
Hartig, Geo.	307	Simmonds, Geo.	Do.
Henderson, Thos. M.	301	do.	Do.
Hunt, Dubar.	308	do.	Do.
Kimball, F. D.	435	do.	Do.
Kroger, F. B.	426	do.	Do.
Landon, W. J.	432	do.	Do.
McKenzie, C. D.	431	do.	Do.
Malone, E.	428	do.	Do.
Morristette, L. N.	310	do.	Do.
O'Brien, Jas. S.	434	do.	Do.
Penny, L. W.	420	do.	Do.
Phillips, Fred. R.	309	do.	Do.
Pratt, Harry A.	433	do.	Do.
Reardon, P. J.	303	do.	Do.
Runnels, H. B.	418	do.	Do.
Schoonover, L. D.	427	do.	Do.
Smith, Geo. F.	423	do.	Do.
Tearney, Jas.	421	do.	Do.
Walsh, Wm. M.	305	do.	Do.
Brook, Wm. J.	327	Christopher, C.	Do.
Brook, L.	216	do.	Do.
Dinius, Lillian.	203	do.	Seattle, Wash., 1717 Belmont avenue.
Dugdell, Harry.	238	do.	Seattle, Wash.
Hartman, J. P.	214	do.	Do.
Letcher, W. N.	239	do.	Do.
Morrill, H. G.	215	do.	Do.
Noll, J. B.	211	do.	Do.
Reiter, J. W.	202	do.	Do.
Seagrove, A. A.	209	do.	Do.
Seagrove, M. A.	210	do.	Do.
Shaffer, J. C.	240	do.	Do.
Simmonds, A. B.	204	do.	Do.
Simmonds, B. P.	205	do.	Do.
Simmonds, Geo.	206	do.	Do.
Simmonds, H. J.	207	do.	Do.
Simmonds, Harriet.	208	do.	Do.
Weeks, Cecil.	213	do.	Do.
Weeks, E. D.	212	do.	Do.
Bassett, E. A.	30	(?)	Do.
Bryant, C. A.	512	(?)	Do.
Clark, Arthur.	35	(?)	Do.
Breitenstein, T. C.	14	(?)	Do.
Bredenburg, Albin.	117	(?)	Do.
Hesse, Udo.	9	(?)	Do.

Applicant.	D. S.	Agent.	Address.
Struthers, F.	24	(?)	Seattle, Wash.
Sammels, Geo.	10	(?)	Do.
Runnels, A. F.	518	(?)	Do.
Redly, John	32	(?)	Do.
Prenatt, A.	34	(?)	Do.
Munday, F. K.	343	(?)	Do.
Mahoney, B. G.	47	(?)	Do.
Hunt, A. B.	42	(?)	Do.
Hirth, J. L.	20	(?)	Do.
Henry, H. C.	159	Cunningham, C.	Seattle, Halley Building.
Smith, Chas. J.	180	do.	Do.
Nelson, N. B.	158	do.	Do.
Moore, Walter B.	162	do.	Do.
Cole, I. L.	150	Cherum, S. C.	Do.
Holck, Ole M.	507	Feed, Torger A.	Do.
Harper, F. C.	87	Green, M. A.	Do.
Hamlin, Sarah N.	279	do.	Do.
Hamlin, P. D.	113	do.	Do.
Griffin, O.	84	do.	Do.
Green, M. A.	89	(?)	Seattle, Alaska Building.
Green, Cora	358	Green, M. A.	Do.
Chilberg, J. E.	59	do.	Do.
Chilberg, A. M.	97	do.	Do.
Campbell, S. M.	282	do.	Seattle, Wash.
Brawley, A. F.	107	do.	Do.
Allen, Watson	98	do.	Do.
Abernathy, W. A.	125	do.	Do.
White, J. H.	60	do.	Do.
White, G. W. H.	62	do.	Do.
Wheeler, Dannie T.	264	do.	Do.
Wallace, John	111	do.	Do.
Turner, Lester	283	do.	Do.
Tottam, B. T.	94	do.	Do.
Tottam, A. M.	92	do.	Do.
Simlson, J. R.	95	do.	Do.
Runkel, P. L.	96	do.	Do.
Rinehart, W. V.	61	do.	Seattle, Alaska Building.
Reyburn, H.	88	do.	Do.
Mertens, G. W.	361	do.	Do.
Kinnear, R.	93	do.	Do.
Hollenbech, H. O.	58	do.	Do.
Kinnear, Chas.	100	do.	Do.
Harrimann, H. R.	39	Hunt, A. B.	Do.
Davis, Clark	45	do.	Do.
Davis, Geo.	520	do.	Do.
Davis, Chas. W.	41	do.	Do.
Cotterrill, G. F.	44	do.	Do.
Behrens, A.	40	do.	Do.
Schram, John	46	do.	Do.
Sautler, Otto E.	38	do.	Do.
Mosley, J. L.	37	do.	Do.
Lippy, T. S.	43	do.	Do.
Lydon, T. J.	235	Metcher, W. N.	Seattle, Wash., Alaska Building.
Lydon, A. J.	234	do.	Seattle, Wash.
Felitz, Fred	237	do.	Seattle, Wash., 2019 Sixth avenue.
Runnels, Annie E.	516	Runnels, A. F.	Seattle, Wash.
Felitz, Fred	236	Metcher, W. N.	Do.
Runnels, Annie	517	Runnels, A. F.	Do.
Heney, P. A.	246	Stracey, C. A.	Do.
Heney, M. J.	247	Stracey, A. H.	Do.
Hamilton, J. M.	269	do.	Do.
Hamilton, Almira	254	do.	Do.
Haller, L. W.	268	do.	Do.
Gottstein, Wm.	252	do.	Do.
Gardner, J. D.	258	do.	Seattle, Wash., 1008 Washington.
Fulton, W. S.	251	do.	Seattle, Wash., 305 Mutual Life Building.
Fry, Izora V.	266	do.	Seattle, Wash., R.
Fry, A. C.	264	do.	Seattle, Wash., 606 West avenue.
Emens, Stacy B.	274	do.	Seattle, Wash.
Davison, S. R.	273	do.	Do.
Cox, R. B., jr.	271	do.	Do.
Conway J. P.	249	do.	Do.
Cohen, A. L.	244	do.	Seattle, Wash., 902 Sixteenth avenue.
Calhoun, Scott	242	do.	Seattle, Wash., 719 Second avenue.
Calhoun, Grant	275	do.	Seattle, Wash., 1422 East Denny way.
Baxter, Fred H.	256	do.	Seattle, Wash., 1104 First avenue East.
Wright, M. F.	248	do.	Seattle, Wash.
Trowbridge, K. F.	270	do.	Do.
Stuver, J. M.	265	do.	Do.
Stuver, Chas.	262	do.	Do.
Slegley, Mabel A.	263	do.	Do.
Slegley, E. E.	138	Shiels, Archie W.	Do.
Rice, A. M.	267	Stracey, A. E.	Seattle, Wash., or North Yakima, Wash.
Ratchliffe, E. M.	243	do.	Seattle, Wash.
Purdy, P. A.	272	do.	Do.

Applicant.	D. S.	Agent.	Address.
Miller, A. C.	257	Stracey, A. E.	Seattle, Wash.
Middaugh, H.	245	do	Do.
Loghary, J. B.	255	do	Do.
Johnston, W. R.	241	Stracey, A. H.	Do.
Johnston, R. C.	253	do	Do.
Hill, Homer M.	250	do	Do.
Footo, Oscar.	194	Wardwill, James	Seattle, Wash., "The Otis" Apartments.
Footo, E. E.	193	do	Seattle, Wash.
Hughes, John.	508	White, D. H.	Do.
Hughes, D. H.	510	(?)	Do.
Hughes, A. E.	509	White, D. H.	Do.
Frink, J. M.	190	Young, J. R.	Seattle, Wash., Washington Hotel Annex.
Campbell, John.	133	do	Do.
Burke, Matilda.	139	do	Seattle, Wash.
Campbell, John.	134	do	Do.
Bliethen, A. J.	141	do	Do.
Young, J. R.	367	(?)	Seattle, Wash., 234 Pioneer Building.
Williams, B. L.	142	Young, J. R.	Seattle, Wash.
Pearce, W. E.	126	do	Seattle, Wash., 408 Wall street.
Moran, Robt.	140	do	Seattle, Wash.
MacDougall, J. B.	131	do	Do.
Love, Mand.	368	do	Linden, Va.
Brooks, E. J.	77	Smith, N. E.	Juneau, Alaska.
Back, A. D.	75	do	Do.
Caro, J. B.	78	do	Do.
Casey, W. W.	76	do	Do.
Diggs, Joe.	74	do	Do.
Gilmire, P. J.	80	do	Do.
Goldstein, Chas.	70	do	Do.
McNaughton, Guy.	68	do	Do.
McCloskey, John.	67	do	Do.
McBride, J. C.	63	do	Do.
McCloskey, Jas.	79	do	Do.
McGrath, C. M.	66	do	Do.
Malone, Harry.	66	do	Do.
Margie, E. J.	81	do	Do.
Mullen, Anna F.	73	do	Do.
Raymond, R. J.	65	do	Do.
Saunders, Robt. M.	115	do	Do.
Saunders.	69	do	Do.
Woodruff, T. G.	71	do	Do.
Rathbone, E. J.	371	(?)	Catalla, Alaska.
Powers, M. J.	232	(?)	Do.
Hamilton, J. T.	233	(?)	Do.
Cunningham, G. R.	348	(?)	Do.
Reynolds, Jas. A.	5	(?)	Do.
Chesum, S. C.	148	(?)	Do.
Cary, Frank.	200	Christopher, C.	Do.
Calhoun, J. J.	57	Harkrader, Geo.	Do.
Britton, C. G.	370	Willoughby, O. L.	Do.
Wilson, Clarence P.	219	Christopher, C.	Do.
Smith, N. E.	64	(?)	Tannakke, Alaska.
Hubbell, Chas. S.	314	Stimmonds, Geo.	Wrangell, Alaska.
Harkrader, Geo.	54	(?)	Juneau, Alaska.
Broughton, Geo. F.	347	Dickerman, A. R.	Do.
White, D. L.	51	(?)	Katalla, Alaska.
Warddell, Jas.	192	(?)	Do.
Stewart, F. H.	199	(?)	Do.
Smith, New. H.	50	(?)	Kayak, Alaska.
Shiels, Archie W.	135	(?)	Katalla, Alaska.
Peterson, Peter L.	123	(?)	Do.
Olds, L. A.	341	Warddell, Jas.	Juneau, Alaska.
Odynski, Wm.	12	(?)	Kayak, Alaska.
Nichols, J. R.	1	(?)	Katalla or Kayak, Alaska.
Mullen, Ignatius.	180	(?)	Kayak, Alaska.
Muerer, Jacob.	17	(?)	Do.
Lind, Fred.	122	Feed, Torger A.	Home or Katalla, Alaska.
Kontrosb, Jos.	4	do	Kayak, Alaska.
Jones, Wm.	18	(?)	Do.
Gylan, John.	2	(?)	Do.
Holland, Lars.	36	(?)	Do.
Hartline, J. W.	349	(?)	Do.
Harris, Well. S.	375	Waroson, Frank.	Knik, Alaska.
Greer, Thos.	53	(?)	Katalla, Alaska.
Greer, Chas.	22	(?)	Kayak, Alaska.
Ackles, Frank.	16	(?)	Katalla or Kayak, Alaska.
Feed, Torger A.	118	(?)	Do.
Feater, Henry.	48	(?)	Do.
Edkins, Walter.	52	(?)	Do.
Davison, J. C.	28	(?)	Kayak, Alaska.
Comner, Chas.	49	(?)	Katalla, Alaska.

FINIS.

In addition to the list of applicants sent me by your office, June 21, 1907, I have added about 120 names that I found of record at Juneau, Alaska.

From the talk of different attorneys and individuals interested in the Alaska coal lands, I feel that the disposal of the lands all tends toward one direction, and that is the Guggenheim companies. The papers here in Portland, Oreg., are full of the news that the Guggenheims are constructing railroads near Katalla, Alaska, for the purpose of taking out the oil, minerals, etc., and there is an advertisement in the said papers for the employment of 2,000 men to go to Katalla, Alaska, and work for the Guggenheims.

On the eve of my departure from Seattle, Wash., I met M. A. Green, one of the agents handling a large body of coal lands in Alaska. Green said that he had put considerable money into the lands located by C. H. Doughten, and that Doughten was going to sell most, if not all, of the claims located by individuals to individuals. This may be true that the law allows an individual to make an assignment of his claim, but it does not allow one man to locate 40 or 50 claims for as many people and advance the money for the development and improvements of the land for the sole purpose of selling the claims at an advance. I do not believe that there is any rule of the General Land Office or of the Department of the Interior that allows a man to traffic in the public lands of the United States by getting others to loan their names in order to advance the personal interests of the agents.

I would therefore again recommend that these entries be carefully investigated by an experienced and fearless agent.

Very respectfully,

HORACE TILLARD JONES,
Special Agent, General Land Office.

The CHAIRMAN. Mr. Brandeis, let me call your attention to page 4 of this report, near the bottom of the page in the paragraph before the fine print [reads]:

Agent Jones submitted his report (Exhibit 2) to Mr. Ballinger.

Mr. BRANDEIS. That is the report of August 10.

The CHAIRMAN. August 10. And this letter was written in December, and that report of August 10 was made by Agent Jones before Mr. Glavis was put in charge of these Alaska claims?

Mr. BRANDEIS. Yes. All that Mr. Glavis had to do with the cases before that, I mean latterly, was that Mr. Jones had come to him as one who had had experience in the cases to get information in regard to the laws of conspiracy and the laws relating to coal lands, in consequence of the instructions in Assistant Commissioner Dennett's letter of June 21 that he should spend several days in acquainting himself with that law before proceeding with the investigation. Assistant Commissioner Dennett in that letter did not direct him to go to Mr. Glavis, but he went to Mr. Glavis knowing Mr. Glavis's familiarity and experience with the law.

The CHAIRMAN. I call your attention—and I simply do it to get it clear in my own mind—to the report of Mr. Jones (this same Mr. Jones) on page 25, the report of August 10. What I would like information about at this stage of it is: Was not that report made by Mr. Jones before Mr. Glavis was put in charge of these Alaska coal claims?

Mr. BRANDEIS. Certainly; it was.

The CHAIRMAN. So that you do not claim that it was Mr. Glavis who first called the attention of the Land Office here to the fraudulent character of these claims?

Mr. BRANDEIS. Certainly not.

The CHAIRMAN. And Mr. Jones had already done so before him?

Mr. BRANDEIS. Yes, sir. Not only that, but they had been called attention to before Mr. Jones by Mr. Love to a certain extent.

The CHAIRMAN. So that Mr. Jones and Mr. Love had both called the attention of the department to this; that it did not have its inception with the arrival of Mr. Glavis on the scene?

Mr. BRANDEIS. Not at all.

Mr. MADISON. Mr. Love recommended that these claims be clear listed, did he not?

Mr. BRANDEIS. There are certain recommendations, but when we come to discuss the report of Mr. Love of August 2—which, by the way, was not known to Mr. Glavis until December, when he was in Washington—we will see that it does not appear and is not what is ordinarily deemed a recommendation of clear listing.

Senator SUTHERLAND. I suggest that we are getting more evidence out of the counsel than the witness.

Mr. JAMES. They are asking the counsel, and of course he has to answer.

Senator SUTHERLAND. I understand, and think he had better ask the witness.

The CHAIRMAN. Proceed with your documentary evidence and then proceed with the examination of Mr. Glavis.

Mr. BRANDEIS. After receiving the letter from Mr. Dennett, about how soon after that did you proceed to Washington?

Mr. GLAVIS. I left the next morning.

Mr. BRANDEIS. After the receipt of the telegram?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Went direct to Washington?

Mr. GLAVIS. Yes, sir; went right to Washington; arrived there about the 12th or 13th; do not know just what date.

Mr. BRANDEIS. State what was the first thing in relation to the Alaska coal claims that you did in Washington.

Mr. GLAVIS. The first thing I did was to go to the General Land Office and have a long talk with Mr. Schwartz about it.

Mr. BRANDEIS. Now, will you tell us as near as you can what the substance of that interview with Mr. Schwartz was, stating it fully as you can recall it.

Mr. GLAVIS. I told him what the rumors were around Seattle.

Mr. BRANDEIS. Don't say you told him something, but tell as nearly as you can what you told him.

Mr. GLAVIS. I told him that the people at Seattle were saying that there was not going to be any further investigation, and they were saying they were going to get the patents, and told him what Clarke Davis had said to me, and he said he had seen that. I showed him Mr. Jones's report of December 2, 1907. I told him that Mr. Hoyt and I had discussed it some; that I had letters of introduction to the Department of Justice; and he said he would see what could be done. I also pointed out the fact that if nothing would be done there would be another scandal equal to that of the Wyoming and Colorado land-fraud cases that had come out a year before, where they had suppressed the investigation of coal lands in those two States, and pointed out to him the similarity between the testimony of the special agent at that time and what Jones would be able to testify to if they had another scandal; and he agreed with me that something ought to be done. So he went to see Mr. Ballinger.

Mr. BRANDEIS. One moment before you state what he did. Did you anything about the facts which you and Assistant United States

Attorney Hoyt had discovered in relation to the connection with the Wilson Coal Company claim?

Mr. GLAVIS. No; I did not say anything to him then. I told him about that when he was in California, along in August of that year.

Mr. BRANDEIS. Did you say anything to him in regard to seeing Secretary Garfield?

Mr. GLAVIS. No; I was going to take that up with him after I saw what Mr. Ballinger would do about it.

Mr. BRANDEIS. How long was your conference with him on this subject? How long a time did it take?

Mr. GLAVIS. We discussed it, I guess, for an hour and a half or an hour, something like that.

Senator PAYNTER. I would like to ask the witness a question. When you say "they suppressed the investigation with reference to the Wyoming lands," whom do you mean?

Mr. GLAVIS. I refer to the testimony that came out before the Interstate Commerce Commission at Salt Lake City about December, 1906 or 1907. I think probably it had just occurred.

Senator PAYNTER. I am not asking you about the testimony, but who suppressed the investigation?

Mr. GLAVIS. Why, it was charged that the former Commissioner of the General Land Office had, Mr. Richards.

Mr. BRANDEIS. It had nothing whatever to do with Commissioner Ballinger?

Mr. GLAVIS. No, sir; Commissioner Ballinger was not in office at that time.

Mr. BRANDEIS. I want to ask you one question, whether in your discussion there was any fault found by you or Assistant United States Attorney Hoyt in regard to the conduct of the Land Office otherwise than in respect to these Alaska coal lands as to the efficiency or conduct of the office?

Mr. GLAVIS. We thought it was rather peculiar that Commissioner Ballinger should change the rules and regulations of the coal lands.

The CHAIRMAN. You thought it was strange that he would change the rules and regulations. Had he in fact made any change in the rules and regulations?

Mr. GLAVIS. Yes. The rules and regulations dated April 12, 1907, are different from the former rules and regulations governing the entry of coal lands.

The CHAIRMAN. Now, briefly state the substance of the change.

Mr. GLAVIS. I could not state all of them, but I remember one. That was: The old rules and regulations said that only one entry or filing would be permitted under the coal-land laws. Mr. Ballinger's regulations read only one entry would be allowed under the coal-land laws. While in the Portland Coal and Coke Company cases we had found two instances where two filings had been made for coal lands.

The CHAIRMAN. Made in one entry or separate?

Mr. GLAVIS. Separate entries. And until these new rules and regulations we thought that we might be able to prosecute them criminally for swearing, in their second affidavit, that they had never before made a coal filing.

The CHAIRMAN. Will you be kind enough at this point, or your counsel here, to cut out the rules that were changed and show the

change and put it in the record at this point, so that we can see exactly what the changes are in the rules?

(The rules referred to will be printed at the close of the hearings of Saturday, January 29, 1910.)

Mr. JAMES. You said in the conversation with Schwartz that you have been detailing; you said to him "they say they are going to get their patents." Did you give him any reason that they gave you, or did they give any, why they thought they would get these patents allowed? Whom do you refer to when you refer to "them"?

Mr. GLAVIS. Different people in Seattle were talking about it. It was rumored. They come to us whenever there appears to be anything irregular, and people begin to talk. That is the way I got it. From what Mr. Hoyt told me about what one or two of the coal claimants said to him indicated that—but he can testify about that better than I can.

Mr. JAMES. Did you tell Schwartz why they said they were certain they were going to get them?

Mr. GLAVIS. They said they were going to get the patents—and there would be no further investigation; they were going to get them.

Mr. JAMES. And they gave no reason why they made that statement?

Mr. GLAVIS. No, they did not give any reason. I do not know the reasons they had for believing they would get the patents.

Mr. OLMSTED. What claimant made that statement?

Mr. GLAVIS. Why, there were a number of claimants made statements like that, from the information I received, and particularly in the Hunt group, the group Clarke Davis is interested in.

Mr. OLMSTED. Who were the claimants; can you give us the names of the claimants who made the statement?

Mr. GLAVIS. Mr. Hoyt could give those better than I. My opinion would be only a memory of whom I think the claimants were. He would know the names.

Mr. OLMSTED. Did you not hear the statements, or did you get it from Mr. Hoyt?

Mr. GLAVIS. No; these came from Mr. Hoyt about these particular ones.

Mr. BRANDEIS. You were about to state that Mr. Schwartz said he would go to see Commissioner Ballinger and see what could be done about it.

Mr. GLAVIS. Yes. He went downstairs, and shortly afterwards I had a conference.

Mr. BRANDEIS. What did Mr. Schwartz say to you when he came back?

Mr. GLAVIS. He said that the commissioner wanted to see me about it.

Mr. BRANDEIS. Did he say anything to you as to what he had said to the commissioner?

Mr. GLAVIS. He said he had discussed the Alaska coal situation with him and that Mr. Ballinger wanted to see me about it. I went downstairs and had a conference with Mr. Ballinger.

Mr. BRANDEIS. I will ask you to state as fully as you can what passed between you and Commissioner Ballinger at that time.

Mr. GLAVIS. When I came in, Mr. Ballinger told me that Mr. Schwartz had spoken to him about the Alaska coal cases and that he

had directed Mr. Schwartz to give me charge of the investigation of the cases.

The CHAIRMAN. He said he had directed Mr. Schwartz to put you in charge of the cases at that time?

Mr. GLAVIS. Yes, sir; that was the first time I was officially notified that I would have charge of the cases and the first time I did have charge of the Alaska cases.

The CHAIRMAN. And the first result of your conference with Mr. Schwartz on this subject was that the Commissioner of the Land Office put you in charge of the investigation?

Mr. GLAVIS. Mr. Ballinger told me that personally when I went to see him.

The CHAIRMAN. The result of this conversation with Schwartz afterwards, following the conversation with Mr. Ballinger, was that you were put in charge of these cases?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That was the immediate effect, happened in a few minutes, or at least in an hour or so after you had talked with Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. What was the date of that?

Mr. GLAVIS. I could tell if I had my daily report books here.

Mr. BRANDEIS. We have called for those, Mr. Chairman.

Mr. GLAVIS. I think it was about December 13, 1907; it may be a day or so one way or the other; I can not recollect the exact date.

Mr. BRANDEIS. Now, will you state what further passed between Commissioner Ballinger and yourself?

Mr. GLAVIS. I told him what I thought we could do.

Mr. BRANDEIS. What did you tell him?

Mr. GLAVIS. I told him I thought we could cancel all the coal cases up there, because the cases were similar to those of investigations that I had heretofore made; that is, that most of them were prominent men and had gone into a pool, and I thought the evidence would prove that this was true.

Mr. BRANDEIS. Did you refer to the cases you had previously had?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. What cases did you mention?

Mr. GLAVIS. I called attention particularly to the Portland Coal and Coke Company cases, and in those cases all the men were prominent men, wealthy men, and showed him that those cases—the investigation of the Alaska cases—would no doubt show the same situation. For instance, in the Cunningham cases they had an agent who was not very wealthy, and all the claimants in the Cunningham cases were wealthy men, and in the Portland Coal and Coke Company cases that was the same situation. Mr. Ballinger knew about the Portland Coal and Coke Company cases, because in June, 1907, when he was at Seattle, Mr. Hoyt and myself discussed the law and the evidence with him at that time. Mr. Ballinger told me that a lot of those coal claimants were personal friends of his and business associates in the past, and that he had understood that there had been a great deal of talk that they were going to get the patents; that there would not be anything further done, and he said, "Now, Glavis, I want you when you go to Seattle, when you start the investigation, I want you to let it become publicly known, let the people under-

stand, that we want a thorough investigation of these whole cases." He said, "I want you to understand that, no matter who it hurts, you are to go right after them, whether they are friends of mine or not."

Mr. BRANDEIS. Was there any special reference to any particular persons?

Mr. GLAVIS. Yes, sir; he mentioned some Spokane people whom he had known for quite a while, and mentioned some people in Seattle.

Mr. BRANDEIS. What names did he mention, so far as you can recall?

Mr. GLAVIS. He mentioned H. C. Henley and C. J. Smith.

Mr. BRANDEIS. What group are they connected with?

Mr. GLAVIS. They are in the Cunningham group.

Mr. BRANDEIS. What else that you recall was said?

Mr. GLAVIS. Well, I do not know, I think that that was practically all that was said.

Mr. BRANDEIS. Was anything said about Love?

Mr. GLAVIS. Oh, yes, sir.

Mr. BRANDEIS. Tell us what was said, that you can recall, about Love.

Mr. GLAVIS. I told him—he knew about it at that time, about Love's being a candidate for the marshalship, and in some way he mentioned it, and I told him——

Mr. BRANDEIS. The marshalship of Alaska?

Mr. GLAVIS. Yes, sir; for one of the judicial districts there. I told him that I did not think that a man who was a candidate for political appointment like that should be allowed to remain in Alaska; that he could not very well do his duty.

Mr. BRANDEIS. What do you mean by being allowed to remain in Alaska?

Mr. GLAVIS. I thought that they ought to have put somebody else up there until he was either appointed or it was determined that he would not get the appointment.

Mr. BRANDEIS. You mean as special agent?

Mr. GLAVIS. Yes, sir; because a special agent can not, in investigations where he is indebted to the people, or expects to be indebted to the people for political advancement, very well do his duty, no matter how much he tries. I do not think, and Judge Ballinger said that he agreed with me and that he should not be allowed to remain there, that naturally his judgment would be a little warped.

Mr. BRANDEIS. Was anything said about his integrity?

Mr. GLAVIS. At that time?

Mr. BRANDEIS. Yes, sir.

Mr. GLAVIS. No, sir; I never said anything about him. I did not know anything about him except that.

The CHAIRMAN. Let me ask you a question right here. Was not Mr. Love at that time, or shortly after that time, eliminated from the work of investigating these claims?

Mr. GLAVIS. Yes, sir; I did that. It was about one of the first steps I took in the Alaska coal investigation.

The CHAIRMAN. That was immediately after that?

Mr. GLAVIS. Well, in January, about a month after; not later than a month after.

The CHAIRMAN. Was any objection found against your eliminating him from the examination?

Mr. GLAVIS. No, sir; he agreed with me that he should not be allowed to investigate the case; that his judgment could not be depended upon, because the people who were interested in those coal cases and also interested in other land matters in Alaska were prominent men, and men whom he would naturally have to depend upon for his appointment, or recommendations at least for his appointment, as marshal.

Mr. BRANDEIS. That matter was thoroughly discussed there between you and Mr. Ballinger there at that time, was it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And Mr. Ballinger was entirely in accord with your suggestion that Love should not be allowed to investigate?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, was anything said at that time in regard to the Davis incident which you had reported in your letter of the 12th?

Mr. GLAVIS. No, sir. I considered his remarks about these rumors that Schwartz had perhaps told him about it or that he had seen it in my report, and that he included that in his general statement that he wanted to disprove this; wanted it to become known in Seattle that there was not going to be any favoritism shown. That, I thought, he included in his remarks, although he did not specifically state the incident.

Mr. BRANDEIS. That is——

The CHAIRMAN. One moment. There was nothing in that conversation that indicated to you on the part of Mr. Ballinger that he wanted you to make only a partial investigation?

Mr. GLAVIS. Do you mean me?

The CHAIRMAN. Yes.

Mr. GLAVIS. No, sir; he emphasized the fact that he wanted a thorough investigation and examination made of all the Alaska coal cases.

Mr. BRANDEIS. And you were thoroughly convinced that that was what he desired you to have done, were you not?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. You went away thoroughly satisfied in that respect, did you?

Mr. GLAVIS. Yes, sir; I went away and was very happy about it, because I felt that I had unnecessarily worried about there being any cause for scandal because he had seemed more anxious to make a thorough investigation there.

Mr. BRANDEIS. Now, was anything said in that conversation about dummy entries that you recollect?

Mr. GLAVIS. No; I do not think there was. I know there was not.

Mr. BRANDEIS. The frauds that you spoke to him about were not dummy entry frauds, but had reference to frauds through the combination, like the Portland Coal and Coke Company cases?

Mr. GLAVIS. Yes, sir; I had never had any experience with any other frauds under the coal-land laws except that of combinations to unlawfully acquire more lands than were allowed an association of persons under the law.

The CHAIRMAN. Now, the fraud in this case that you refer to consists in the fact that these entrymen or locators or claimants did not

really enter them for their own benefit, but with a view to transferring them to some combination or some association. Is this the fraud that you refer to?

Mr. GLAVIS. Yes, sir; as is often the case, no one is in the combination except the claimants themselves; they combine among themselves usually.

The CHAIRMAN. So that if these claimants, these locators—individual locators—had gone on in a regular manner, without making any agreement to transfer their claims to an association or combination; if they had proceeded in a regular way they could have got those coal lands, each his claim at \$10 an acre, could he not, under the law?

Mr. GLAVIS. Yes, sir; if he had not violated the law.

The CHAIRMAN. And that would have been no fraud on the Government?

Mr. GLAVIS. No, sir; where they had not entered into this unlawful agreement, or agreements, there would not be any frauds.

Mr. MADISON. Did they enter into an agreement to sell to some other party, or did they enter into agreements to pool their interests and work the property jointly, thus, in effect, getting more for an association than the law would allow?

Mr. GLAVIS. Well, they did both; some groups did one and some another.

Mr. MADISON. But either would be a violation of the land laws?

Mr. GLAVIS. Oh, yes, sir; both of them would be a violation of the land law.

Mr. JAMES. Is it not true that certain parties there would furnish the money and procure these people to go out and take this land for the purpose of deeding it finally to a syndicate or coal company?

Mr. GLAVIS. While there were some that put up all the money, or part of the money, and promised if they got anything out of it they would give them a certain per cent—there were some like that in all cases—I do not think there was a claimant who testified in his affidavit that he was not to receive some interest. Some of the entrymen were to receive a greater interest than others in their coal lands that they filed.

Mr. MADISON. Some of them were to get stock in the companies for work that they had performed, and others were to be paid money?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. Are you speaking now of the Cunningham case?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. I thought you said the Cunningham claimants were wealthy people.

Mr. GLAVIS. Yes, sir; in that case they were to pool their claims and take stock in a company.

Mr. OLMSTED. Did those wealthy people permit somebody else to put up the money for them?

Mr. GLAVIS. No, sir; that was in reference to another group; in the Cunningham group they had the same unlawful arrangement that had been entered into by the Portland Coal and Coke Company, which Judge Hanford, in the United States court out there, has declared unlawful.

Mr. OLMSTED. You have spoken of affidavits, and so forth. Have you those affidavits?

Mr. GLAVIS. No, sir; I have not any of them. We took during our investigation some 400 affidavits—probably 600 or 700.

Senator FLETCHER. I imagine that this is also anticipating what Mr. Brandeis will say.

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. I suggest that we will get to that in the proper order.

The CHAIRMAN. I will suggest to the committee that where the special agents made these reports and sent them to the Land Office they are on file here.

Mr. GLAVIS. If reports have been made on them, they should be here.

The CHAIRMAN. That is, if the agents have reported. When they make those reports they send them to the department here, as I understand.

Mr. GLAVIS. Yes, sir; that is, copies of them. They keep the originals out in the Field Division headquarters. I sent out several hundred while I was in the service.

The CHAIRMAN. What did you do with your original affidavits?

Mr. GLAVIS. We would keep them in our office files at Seattle, in the special agent's office.

Mr. DENBY. Is it alleged that most of these claimants entered into these agreements before they made their first declaratory statement?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Or before they made any statement?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, you have stated that you left this interview with Commissioner Ballinger and went to Mr. Schwartz. Now, tell us what you did then next in regard to those cases.

Mr. GLAVIS. Mr. Schwartz had on file all the papers and reports and letters referring to the Alaska cases, and told me to look them over, and what copies I did not have in Portland—that what copies Jones did not have there—to give it to the stenographers and have copies made, and that he would prepare a letter directing me to make the investigation of the cases, and he wanted me to investigate all of them. Of course he knew that that would take quite a bit of work, and I went—

Mr. BRANDEIS. You mean that it would take quite a bit of work getting papers together?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, tell us what you did in the way of getting papers together.

Mr. GLAVIS. I went all through the files and picked out all the documents which Jones did not have copies of; that is, I had everything copied except the Jones report of August 10 and 13 and November 1 or 2—I forget the date, but I think it was November 1. I had copies of everything else made.

Mr. BRANDEIS. How long did this work take of getting the copies made, and before you left Washington?

Mr. GLAVIS. It took about six or seven days, I guess. I was in Washington about a week or ten days at the time.

Mr. BRANDEIS. Did you have more than one conference or more than those two conferences with Mr. Schwartz in regard to those Alaska cases?

Mr. GLAVIS. I would see him every day and call his attention to various statements made in the letters of complaint in the reports of the agents, and we would discuss generally the Alaska situation; also during that period I was discussing the various investigations that I had under way in Oregon, as a chief does when he comes in from the field; that is, to discuss everything that is related to his field work.

Mr. BRANDEIS. Did you at that time have before you the report of Special Agent Love dated August 2, 1907?

Mr. GLAVIS. Yes, sir; I had that.

Mr. BRANDEIS. Which appears on page 35 of Senate Document No. 248?

Mr. GLAVIS. Yes, sir; I had that.

Mr. BRANDEIS. You had that before you?

Mr. GLAVIS. Oh; yes, sir.

Mr. BRANDEIS. Had you seen that report of August 2, 1907—the Love report—before you went over the files in Washington at that time?

Mr. GLAVIS. No, sir; I had never seen it before. I thought is peculiar that Jones—

Mr. BRANDEIS. Had you heard anything about it? You had never heard of it from Jones when he made his report to you, had you?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Did you not discuss that report or take it up in any way with Mr. Schwartz?

Mr. GLAVIS. Yes, sir; I pointed out to him the fact that it showed a possibility of conspiracy there.

Mr. BRANDEIS. That is you discussed that very report with Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. As evidencing, or as tending to show that there was a conspiracy?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You mean a conspiracy between Love and the claimants?

Mr. GLAVIS. No, sir; conspiracy among the claimants. Love reported the possibility.

The CHAIRMAN. Not conspiracy on the part of Mr. Love?

Mr. GLAVIS. No, sir; I thought his report would be in the nature of a complaint. One paragraph of it does.

Mr. BRANDEIS. There was no suggestion at any time, then, of any lack of integrity on the part of Mr. Love, was there, in your conversations with Schwartz, any more than there was in your conversations with the commissioner?

Mr. GLAVIS. No, sir.

Mr. JAMES. You say you considered the letter of Love in the nature of a complaint. The last line of it says:

At different dates I have recommended to the register and receiver, Juneau, the allowance of the application of the above entrymen.

Mr. GLAVIS. I said part of it.

Mr. JAMES. I had reference to page 135. Then it proceeds on page 135—

I believe the action of the entrymen toward the formation of a company pending patent, as above set out, to be allowable under the law, but deem it proper to lay the information before you.

Mr. GLAVIS. Here is the part of the report which showed that there had been an understanding among the claimants to do this unlawful act [indicating].

Mr. JAMES. I understand this letter shows that also, and he also, down here, recognizes that his understanding of the law is that that is allowable. Have you some other report there?

Mr. GLAVIS. No, sir; this is the one I had in mind. While he states it as being his opinion that it is allowable, as a matter of fact, he stated in the second paragraph of that letter that—

Mr. Cunningham, who is fully informed on all matters past and all future plans of his principals, he stated that it had always been the hope of these several persons that arrangements might be effected after entry for the joint working of the lands.

Well, if it had always been a "hope," and they had had that understanding at the time they filed, under the decision of the United States Supreme Court, and under the Hanford decision, it was unlawful.

Mr. JAMES. Conspiracy?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. When you said that this was in the nature of a complaint, you did not mean by that that it was Love complaining against these entrymen for patents?

Mr. GLAVIS. No, sir. His report is not consistent. He calls attention to an unlawful understanding, and then concludes by recommending the issuance of the patent.

Mr. JAMES. That is just the point I was getting at.

The CHAIRMAN. Mr. Glavis and gentlemen, I think we can clear this up a little, and we might as well go into it now. Now, what is the modus operandi of getting a location and perfecting it? What are the different steps? Is not the first step to discover the coal, and then survey your claim, stake it out and file copy of it in the recorder's office of the district and then another with the register and receiver at the local land office? Is not that the first step?

Mr. GLAVIS. Yes, sir; he must file a declaratory statement.

The CHAIRMAN. And you must stake it out on the grounds, too?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You must stake out your claim on the ground and file your statement—a declaratory statement with the local land office and also with the recorder of the district. Now the next step after that in the proceeding is to go to the land office and prove up, as it were, a claim for the land and bring your proof showing that you have complied with the law in every respect.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And upon that proof the register and receiver issue a receipt, do they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And that constitutes what we understand in the law as an entry; that is, an entry of the land. Now, if up to that time, up to the time entry is effected, the entrymen have done nothing contrary to law, committed no fraud, or perpetrated no fraud, his equitable title is complete, is it not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. After making that entry his equitable title is complete and he is entitled to a patent, as a matter of right, if everything is completed up to that time?

Mr. GLAVIS. He can do anything with it then; he can form any combination, or mortgage it, or do anything else with it.

The CHAIRMAN. After he has made that entry and got the receipt at the Land Office it is not fraud for him after that time to make an agreement to convey his claim, is it?

Mr. GLAVIS. No, sir; none at all.

The CHAIRMAN. He can do it between that time and the time the patent is issued?

Mr. GLAVIS. Yes, sir; that is so.

The CHAIRMAN. So that if you read this letter—the letter of Love in that light, you will understand what it means, and that is that these entrymen were talking about forming an association or combination after they had perfected their entry at the land office; after they had become complete equitable owners. Is that not what it means?

Mr. GLAVIS. I would like to explain that in my own way. He says, "In a recent conversation with Mr. Cunningham, who is fully informed on all matters and all future plans of his principals, he stated that it had always been the hope of the several persons that arrangements might be effected after entry for the joint working of the lands." That is the point I want to make, on the word "always;" "that it had always been the hope of the several persons that arrangements might be effected after entry."

The CHAIRMAN. After entry?

Mr. GLAVIS. Yes; that the hope and the understanding among themselves existed before entry.

The CHAIRMAN. I know, but that refers to an arrangement made after the entry?

Mr. GLAVIS. Yes, sir; but it was the understanding before they made the entry that they should, after making the entry, form this illegal, unlawful understanding.

Mr. OLMSTED. He did not say "understanding;" he said "hope."

Mr. GLAVIS. But that suggestion, as I have said, while it is not conclusive proof of the violation of the law, it suggests the understandings and other arrangements, because the inference would warrant an investigation of such a group of cases.

Senator FLETCHER. Being made for the purpose of forming the combination.

Mr. GLAVIS. Yes, sir; that it had "always" been the hope, would indicate it to me, at least, that that existed prior to entry, and if it existed prior to entry they could not make an affidavit that they had no interest or understanding.

The CHAIRMAN. That is undoubtedly correct.

Mr. GLAVIS. Indirectly or directly among themselves.

The CHAIRMAN. But if there was no agreement, expressed or implied, no understanding about merging or transferring their claims prior to their entry at the local land office, there would be no violation of the law, would there?

Mr. GLAVIS. No, sir; but it did not have to be a written understanding; it was a tacit understanding.

The CHAIRMAN. I understand that. I referred to it generally.

Mr. GLAVIS. No, sir; it would not be.

The CHAIRMAN. They would have a perfect right after they had perfected their entry at the land office, and before the patent was

issued after the date of their entry, to make an agreement, would they not?

Mr. GLAVIS. Yes, sir; they would.

The CHAIRMAN. And that would not be a fraud, provided everything was clean prior to the date of the entry?

Mr. GLAVIS. No, sir; but the fact that those 33 people had, as soon as the entry was made, formed a combination, and the fact that that evidence was before the office, and the fact that Love states that Cunningham informed him that it had always been their "hope" to do this, indicates that they were carrying out a prior agreement before entry was made. It is not conclusive evidence of that fact, but it would warrant that investigation, in my mind.

Mr. DENBY. Do the lands of the separate entrymen lie contiguous?

Mr. GLAVIS. Yes, sir; they are all together.

Mr. MADISON. It struck you as if the 33 men entertained the same hope.

Mr. GLAVIS. Yes, sir, and located it by the same agent.

Mr. MADISON. And that later when they became entrymen would act jointly in carrying out that hope which they had—because that is the language there and shows the hope which they had in their bosoms before they became entrymen.

Mr. GLAVIS. Yes, sir; that is the point that I wished to make.

Senator PAYNTER. Mr. Glavis, you seemed to be discussing the law with a view to determining what it is with reference to the rights of claimants, as to what acts constitute fraud, etc. Now, in reading the opinion of the Attorney-General under date of October 7, 1908, he says, on page 40. Before I quote his decision, if I understand the discussion between you and the chairman of the committee that claimants under no state of the case have a right to enter into any agreement with reference to the use of the property until after the entry has been made. Am I right in that?

Mr. GLAVIS. Yes, sir.

Senator PAYNTER. Then in what the Attorney-General says—he was discussing this question with reference to the act of May, 1908, too.

Mr. GLAVIS. This was prior to the act.

Senator PAYNTER. Yes; the act of May 28, 1908, has reference to lands located or coal claims located in Alaska prior to November 12, 1908. Now, the Attorney-General concludes in this language:

In view of the above considerations, I am of the opinion that if the agreements or arrangements mentioned in your letter were entered into by locators of coal lands in Alaska after they had made their locations in good faith and in their own interest alone, such locations may, under the provisions of the act, May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act. On the other hand, I am of the opinion that, if such agreements or arrangements were entered into prior to such locations being made, such locations do not come within the provisions of said act and can not be lawfully passed to entry and patent.

Now, he seems to conclude—and I read the opinion last night hastily and would not be willing to interpret it without further examination—but he concludes in this opinion, it seems to me, that with respect to all lands located prior to the passage of the act of 1908 they had a right to enter into an agreement between themselves without use of the land, and for their own use, although the entries had not been made.

Mr. GLAVIS. We were discussing——

Senator PAYNTER. I am asking this simply for information as to the law of the case.

Mr. GLAVIS. The report of Mr. Love was made in August, 1907.

Senator PAYNTER. I am not asking about the Love case, but what the Attorney-General says. You have interpreted the law here to the chairman.

Mr. GLAVIS. That was interpreting the law of 1904.

Senator PAYNTER. It is interpreting the law of 1908.

Mr. GLAVIS. We were discussing the old law.

Senator PAYNTER. As to the location prior to November, or May 12, 1906—if the locations were made before that time.

Senator SUTHERLAND. He is discussing a special law with reference to Alaska.

Senator PAYNTER. I understand there is a claim made that under that the people had the right to——

Senator FLINT. He is stating what he construes the law to be prior to the passage of that act.

Senator PAYNTER. Oh, very well.

Mr. JAMES. These entries were made before 1906, to which this refers?

Mr. GLAVIS. Yes, sir; the filings were made before that.

Senator PAYNTER. Have you not been discussing any claims where the locations were made prior to 1906?

Mr. GLAVIS. They were all made prior to that time.

Mr. BRANDEIS. The law on this subject, Mr. Glavis, if I may state it—the decision that you refer to—was the decision in the Trinidad Coal and Coke Company case, was it not?

Mr. GLAVIS. Yes, sir; at that time.

Mr. BRANDEIS. That was the decision that was rendered in 137 United States, which had been the law long before this. Now, Mr. Glavis, did you see Commissioner Ballinger again before leaving Washington about this matter—I mean with reference to the Alaska coal cases—I mean before leaving Washington?

Mr. GLAVIS. No, sir; not with reference to the Alaska coal cases.

Mr. BRANDEIS. And you left for the West about when?

Mr. GLAVIS. December the 19th or 20th, and along about January the 4th I received——

Mr. BRANDEIS. Now, what did you do with reference to those cases after you went West—after the 19th?

Mr. GLAVIS. The first step I took, or the first action that was taken with reference to them, was that I received a letter about December 28, I think, 1907, directing me to make a thorough investigation of all the Alaska coal cases.

Mr. BRANDEIS. That letter ought to be put in evidence. It is an important letter.

The CHAIRMAN. What page is that?

Mr. BRANDEIS. It is page 34. It is the letter of the commissioner to Mr. Glavis formally confirming instructions which he had already received orally, was it not?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And is it the practice of the department, where instructions are given for investigations, as were here, to confirm it later by writing, in order that a record may be kept of what is done?

Mr. GLAVIS. Yes, sir; that is our custom.

Mr. BRANDEIS. And that letter of confirmation, is it customary that it be written at once, or is there usually a lapse of some days before it comes?

Mr. GLAVIS. It usually takes a few days—sometimes a week or so—to get it through. It has to be typewritten and signed and press-copied.

Mr. BRANDEIS. I do not think it is necessary to read that letter, Mr. Chairman.

The CHAIRMAN. That is Exhibit 5, on page 34, is it?

Mr. BRANDEIS. Yes, sir. I merely want it in evidence.

The CHAIRMAN. There is no need to read it.

Mr. BRANDEIS. Now, Mr. Glavis, state what was the next thing you did.

Mr. GLAVIS. I received a letter stating that the Cunningham cases had been proved for patent.

Mr. BRANDEIS. Now, when did you receive that letter?

Mr. GLAVIS. I do not recollect just when I received it.

Mr. BRANDEIS. What did you do after the date of the receipt of that letter?

Mr. GLAVIS. A few days afterwards, it might have been the same day, I do not remember that, I sent a telegram protesting against the issuance of this patent.

Mr. BRANDEIS. Now, that is the telegram of the 22d of January, which I desire to put in evidence.

The CHAIRMAN. Is that in this document?

Mr. BRANDEIS. That is in this book.

The CHAIRMAN. On what page is it?

Mr. BRANDEIS. It is page 464. And that telegram you followed by a letter, did you not, Mr. Glavis?

Mr. GLAVIS. Yes, sir; January 23, 1907.

Mr. BRANDEIS. You mean the 22d?

Mr. GLAVIS. Yes, sir; I should have said the 22d.

(The telegram is as follows:)

[The Western Union Telegraph Company.]

[Number 640. L. Sent by Tay. Rec'd by Bf. 24. Collect. Check. Govt. Received at Wyatt Building, cor. 14th and F streets, Washington, D. C., Jany. 22, 1908. Dated Portland. Ogn., 22.]

TO COMMISSIONER GENERAL LAND OFFICE:

WASHINGTON, D. C.

Coal entries mentioned in your letter Jan. seventh should not be clear listed. Letter follow.

GLAVIS, *Chief.*

Mr. BRANDEIS. I also put in evidence the letter of January 22, which appears on page 8 of the record, the letter that confirms the telegram.

(The letter is as follows:)

PORTLAND, OREG., January 22, 1908.

COMMISSIONER, GENERAL LAND OFFICE,
Washington, D. C.

SIR: I am in receipt of your letter dated January 7, 1908, transmitting a list of coal entries, which, upon report of Special Agent Love, have been clear-listed in Division "P," and referred to Division "N" for action, the names of the entrymen being as follows:

J. G. Cunningham.
Michael Doneen.
Arthur D. Jones.
Orville D. Jones.
Walter B. Moore.
Ignatius Mullen.
F. F. Johnson.
N. B. Nelson.
John A. Finch.
Henry White.
Charles Sweeney.
Hugh B. Wick.

Fred C. Davidson.
F. Cushing Moore.
C. J. Smith.
H. C. Henry.
Alfred Page.
Frank A. Moore.
A. R. Campbell.
B. C. R'blevy.
Henry Wick.
William R. Miller.
Andrew L. Scofield.
Henry W. Collins.

During the summer of 1907 said entries, among others, were partially investigated by Special Agent H. T. Jones, who, under date of August 10, 1907, reported that from the preliminary investigation made he believed that the said entries were fraudulent and recommended further investigation.

Twice since making said report Mr. Jones has called your attention to the same, recommending further investigation of all the Alaska coal cases.

I am advised by Mr. Jones that Agent Love assisted him a little in the investigation of the coal cases, but he did not go to Spokane, where the claimants reside whose entries have been clear-listed. Shortly after the preliminary investigation by agents Love and Jones, I understand that Agent Love returned to Alaska, where he has since remained, but since there are not more than two or three of the entrymen in this group whom Agent Love could have interviewed in Alaska, I am unable to understand how he could intelligently report on the said entries.

While in the office last month, I was directed to take charge of all the Alaska coal cases, among which were the foregoing entries, and by your letter, December 28, 1907, you directed me to advise Special Agent Love that he would do only such work upon the coal cases which I deemed it advisable for him to perform. Feeling that that matter was left entirely to my discretion, I immediately directed Mr. Love to take no further action unless otherwise directed. I did this because it was quite generally known that Mr. Love is an active candidate for appointment to one of the United States marshals in Alaska, and while not questioning his integrity, still his judgment is likely to be a little warped. While Mr. Love was in Seattle last summer he told Agent Jones that he was glad he would not have to investigate the Alaska coal cases, because he had to live up there and he did not desire the enmity of the people, some of those involved being his friends. For my enlightenment and assistance in the investigation of the Alaska coal cases, I have to respectfully request that I be furnished with Special Agent Love's reports upon the entries upon which he had made a favorable recommendation.

In view of Agent Love's political aspirations and because of the conclusions reached by Agent Jones in his preliminary report, I respectfully recommend that the order clear-listing said entries be revoked, pending my investigation. I expect to be able to submit report thereon within a few months, so that the additional delay could hardly cause the claimants much hardship.

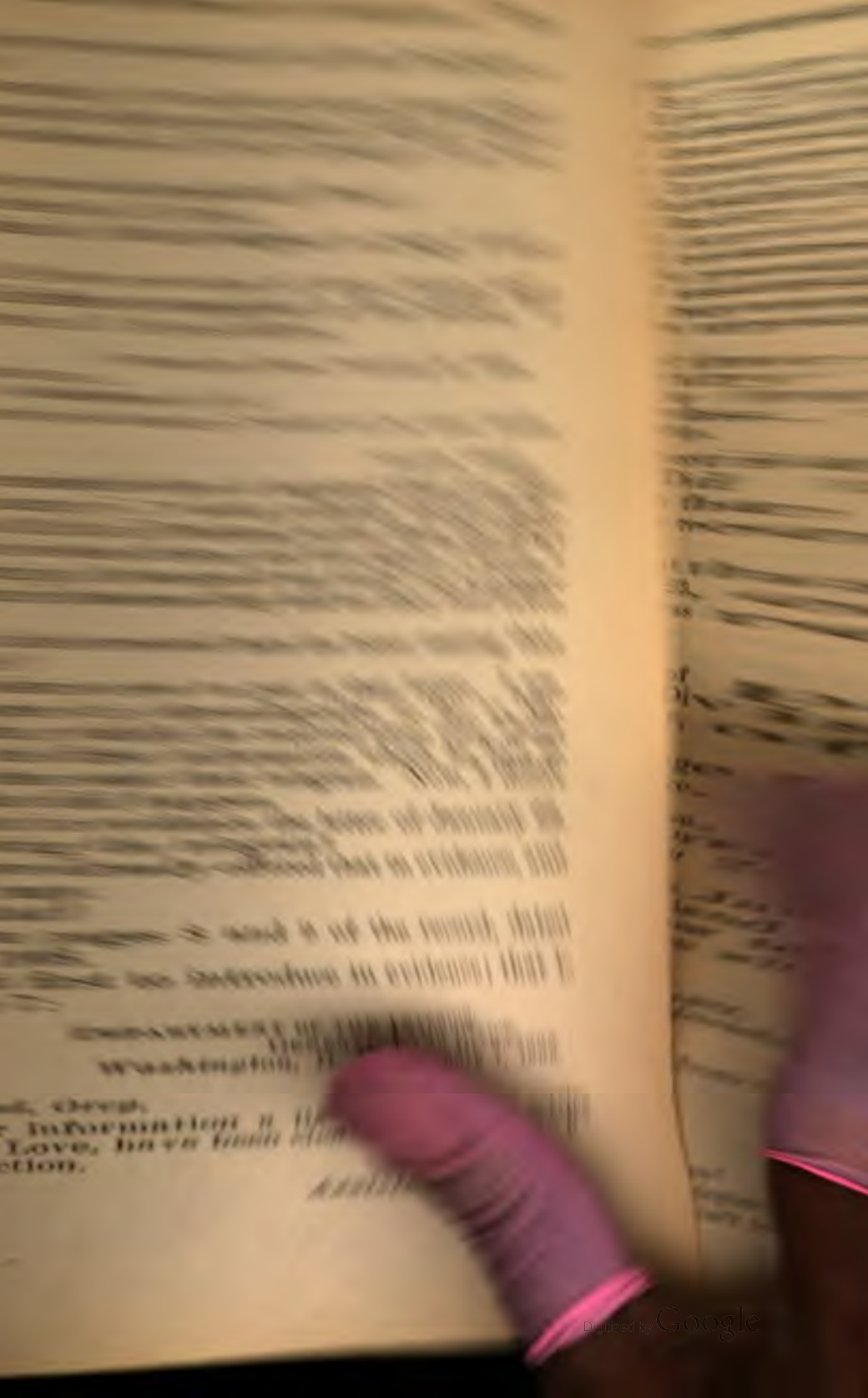
Very respectfully,

L. R. GLAVIS, Chief of Field Division.

Mr. BRANDEIS. Now, before that time you had written to Mr. Love, had you not?

Mr. GLAVIS. About that time; I do not recall what date it was.

Mr. BRANDEIS. There are certain letters written to Mr. Love in January, which are among the letters which we have asked to be produced, and it is therefore not necessary to state the contents of



... of the month, about
... in evidence, that I

EXAMINER OF THE
Washington, D.C.

... of the
... Information of the
... Love, have been
... tion.

Mr. BRANDEIS. What does that mean? What is Division P?

Mr. GLAVIS. That is the investigating division of the General Land Office.

Mr. BRANDEIS. That is the division with which you were connected under Mr. Schwartz and of which Mr. Schwartz was the head?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Please state fully what clear listing from that division means.

Mr. GLAVIS. The statement that there is no ground for further investigation—approving it—as far as the fraudulent character of the entries go. Then we send it to another division and they start upon the examination of the papers, seeing whether the papers are regular and whether all the affidavits have been made.

Mr. BRANDEIS. What is Division N?

Mr. GLAVIS. I think that is the mineral division.

Mr. JAMES. So clear listing means a favorable verdict to the persons who are attempting to obtain the land?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And in the process of getting the patent it must pass through several divisions, each division itself passing upon different questions?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. That is, this Division P passes upon the question of whether it was fraudulent or not and Division N would pass upon the question of whether it was legal in some other respects?

Mr. GLAVIS. Whether the papers were all there, and then they would refer it to the patent division, I think, and they would patent it.

Mr. BRANDEIS. Then there was also another division which would determine in regard to minerals, or would that be under Division N?

Mr. GLAVIS. Division N would pass upon that.

Mr. BRANDEIS. Now, returning to the letter on page 8, of January 22, "have been clear listed in Division P and referred to Division N for action, the names of the entrymen being as follows"—then follow the 33 Cunningham entrymen, do they not?

Mr. GLAVIS. I do not know whether they are all in there or not. There are not all of the 33 given, I think, in that letter. All the names given were Cunningham entrymen.

Mr. BRANDEIS (reading from page 9):

During the summer of 1907 said entries, among others, were partially investigated by Special Agent H. T. Jones, who, under date of August 10, 1907, reported that from the preliminary investigation made he believed that the said entries were fraudulent and recommended further investigation. Twice since making said report Mr. Jones has called your attention to the same, recommending further investigation of all the Alaska coal cases.

I am advised by Mr. Jones that Agent Love assisted him a little in the investigation of the coal cases, but he did not go to Spokane, where the claimants reside whose entries have been clear listed—

That means the Cunningham claimants?

Mr. GLAVIS. Yes, sir. Some of those mentioned in that list reside in Spokane.

Mr. BRANDEIS (reading):

Shortly after the preliminary investigation by Agents Love and Jones I understand that Agent Love returned to Alaska, where he has since remained, but since there are not more than two or three of the entrymen in this group whom Agent Love could have interviewed in Alaska, I am unable to understand how he could intelligently report on the said entries.

While in the office last month I was directed to take charge of all the Alaska coal cases, among which were the foregoing entries, and by your letter, December 28, 1907, you directed me to advise Special Agent Love that he would do only such work upon the coal cases which I deemed it advisable for him to perform. Feeling that that matter was left entirely to my discretion, I immediately directed Mr. Love to take no further action unless otherwise directed. I did this because it was quite generally known that Mr. Love is an active candidate for appointment to one of the United States marshalships in Alaska, and, while not questioning his integrity, still his judgment is likely to be a little warped. While Mr. Love was in Seattle last summer he told Agent Jones that he was glad he would not have to investigate the Alaska coal cases, because he had to live up there and he did not desire the enmity of the people, some of those involved being his friends. For my enlightenment and assistance in the investigation of the Alaska coal cases, I have to respectfully request that I be furnished with Special Agent Love's reports upon the entries upon which he had made a favorable recommendation.

In view of Agent Love's political aspirations, and because of the conclusions reached by Agent Jones in his preliminary report, I respectfully recommend that the order clear listing said entries be revoked pending my investigation. I expect to be able to submit report thereon within a few months, so that the additional delay could hardly cause the claimants much hardship.

The CHAIRMAN. Now, Mr. Brandeis, in this connection, let us know what the Land Office did about this matter. Did they take these entries from the clear list and put them back in the chancery for investigation, or did they comply with Mr. Glavis's recommendation?

Mr. BRANDEIS. They did, immediately, and I will put that in and go back and show what they did earlier. On January 23, on receipt of the telegram from Mr. Glavis and before the letter was received—of course, Mr. Schwartz, as chief—

The CHAIRMAN. What page is that?

Mr. BRANDEIS. Page 464 of the record—the bottom of page 464. The letter of Mr. Schwartz, chief of the Field Service Division, addressed a letter to the chief of Division N. This letter, of course, will go into the record.

The CHAIRMAN. Is it the last letter at the foot of the page?

Mr. BRANDEIS. It is the last letter at the foot of the page.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Washington, D. C., January 23, 1908.

CHIEF DIVISION N:

Referring to my letter of January 4, 1908, and to telegram dated January 6, 1908 (3114/08), from special agent H. K. Love, clear listing coal land entries made through Cunningham, as agent, at Juneau, Alaska, I have now to recall said action and request that further action be not taken in connection with said entries until further advised.

Respectfully,

(Signed) H. H. SCHWARTZ.
Chief Field Service Division.

G.V.F.

The CHAIRMAN. The effect of that was to withdraw them from the clear listing list?

Mr. BRANDEIS. That was to suspend them.

The CHAIRMAN. Put them back where they were before?

Mr. BRANDEIS. Yes, sir.

Mr. MCCALL. That was the day after Mr. Glavis's telegram?

Mr. BRANDEIS. Yes, sir; that was acting on Mr. Glavis's telegram.

Mr. GRAHAM. The effect of that would be to send this back to Division P?

Mr. GLAVIS. Yes, sir; that would be the effect.

The CHAIRMAN. They were in Division P still; that was the investigating division, but they ceased after that order to clear list the claims.

Mr. JAMES. No; they had gone to Division N, had they not?

Mr. GLAVIS. They had gone to Division "N" when they were clear listed.

The CHAIRMAN. I mean they would go back to Division P and there they would remain. That is the investigating division, and they would remain as not clear-listed claims?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. They were in Division N then, because the letter was addressed to Chief of Division N?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I will introduce in evidence the several matters covering the action of the department during the intervening period of which this was the result.

The CHAIRMAN. What intervening period?

Mr. BRANDEIS. The period that intervened between the conference and the direction given by Commissioner Ballinger to Mr. Glavis in the middle of December and the receipt by Mr. Glavis of the letter of January 7 and this request on his part, or protest, against the clear listing. Perhaps before giving merely these letters it would be well to call your attention to other letters which should go into the record as showing that.

Mr. GRAHAM. Do you mean by that that you offer them now?

Mr. BRANDEIS. I offer them in evidence. On page 461 is the letter of C. C. Heltman, Chief of Mineral Division. That is Division N. is it not, Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. The letter is to Mr. H. H. Schwartz, Chief of Division P. It is dated November 5, 1907, and is as follows:

Mr. H. H. SCHWARTZ,

Chief of Division P.

SIR: Pursuant to direction of the Hon. Assistant Commissioner of date September 1, 1907, you are advised that the following Juneau, Alaska, coal entries have been approved by this division for patent and are held awaiting a clear list by you, viz:

No. 17, William E. Miller, Clarence Cunningham, attorney in fact.

No. 19, B. C. Riblet, Clarence Cunningham, attorney in fact.

No. 21, Alfred Page, Clarence Cunningham, attorney in fact.

No. 23, Frederick Burbridge, Clarence Cunningham, attorney in fact.

No. 28, Walter B. Moore, Clarence Cunningham, attorney in fact.

No. 29, Arthur D. Jones, Clarence Cunningham, attorney in fact.

Very respectfully,

(Signed)

C. C. HELTMAN.

Chief Mineral Division.

You will see by that letter that C. C. Heltman reports certain of the Cunningham claims as proved by this division—by this Mineral Division—for patent, "and are held awaiting a clear list by you," and at the bottom of that is the notation: "The foregoing letter contains the following notations on the face and back: 12/6/07 (I suppose the 6th of December, 1907). Mr. Schwartz says hold pending further advice. Request for approval of coal entries from Div. 'N.'"

The CHAIRMAN. This letter from Mr. Heltman states by direction or "Pursuant to direction of the Hon. Assistant Commissioner." Who was the Assistant Commissioner at that time?

Mr. GLAVIS. Mr. Fred Dennett.

Mr. BRANDEIS. Now, on the next page, at the top of page 462, is a letter of December 6, 1907, from C. C. Heltman, Chief of Division N, to the Chief of Division P, as follows:

Sir: Juneau coal entry 3 made February 23, 1907, by Charles J. Smith for the Lyons coal claim, situated in the Kayak recording district, U. S. coal survey No. 71, is ready for patenting. Clarence Cunningham is attorney in fact.

Very respectfully.

(Signed)

C. C. HELTMAN,
Chief of Division N.

And then there is this memorandum under that:

"The foregoing letter contains the following notation on face: Hold until further advised." That was also one of the Cunningham claims, was it not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Let me ask in this connection, referring to that memorandum at the foot of page 461, as to those two memorandums. Do you know who made them or in whose handwriting they are?

Mr. BRANDEIS. I do not; my knowledge of that comes merely from the fact that this is part of the record which was made by Mr. Schwartz in his report to Secretary Ballinger. He gives them as the memorandum on papers appearing in the office. I have never seen the original. Perhaps Mr. Glavis, when he looks at the initials, may be able to say something about it. I will call his attention to it.

The CHAIRMAN. "MDT" at the top of page 462, what does that mean?

Mr. GLAVIS. Those are the initials of one of the clerks. They are probably the initials of the stenographer who wrote the letter. The initials above "C. A. H." would probably be the initials of the clerk who wrote the letter.

Mr. GRAHAM. The letter "N" means the division and the other letters are the initials?

Mr. GLAVIS. Yes, sir; "N" is the division and the other the initials of the clerk writing the letter.

Mr. BRANDEIS. I will now introduce in their order the following letters: December 26, 1907 (p. 462), letter of H. H. Schwartz, Chief Field Service Division, to Mr. J. T. Murphy.

The letter is as follows:

"P" HHS 38231

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 26, 1907.

Mr. J. T. MURPHY:

Upon the attached report from Special Agent Love you will please notify Division "N" that the Alaska coal-land entries in said report mentioned are clear listed as to Division "P." You will also notify Chief of Field Division Glavis.

Respectfully.

JH

H. H. SCHWARTZ,
Chief Field Service Division.

Mr. BRANDEIS. Who is Mr. Murphy?

Mr. GLAVIS. He is a clerk in Division P of the General Land Office.

Mr. BRANDEIS. Did you get any such notice other than the letter of January 7, which you received shortly before January 22?

Mr. GLAVIS. No, sir; that was the only notice I got, that letter.

The CHAIRMAN. Let me call your attention to the note at the foot of that letter: "The foregoing letter contains the following notations on face. See 138303-07." What does that mean?

Mr. BRANDEIS. Mr. Glavis will be able to answer that.

Mr. GLAVIS. I would say that that meant the file number of a case in Division P, but I am not sure. It might have referred to some letter having been written relative to this case.

The CHAIRMAN. It might have referred to some letter or telegram, might it not?

Mr. GLAVIS. Yes, sir; and it might have been a file number. I am inclined to think that it is some letter or telegram.

Mr. BRANDEIS. The next letter is the letter of January 3, 1908, of C. C. Heltman, chief of division, to chief of Division P, as follows:

N C. A. H.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 3, 1908.

CHIEF OF DIVISION P.

SIR: Juneau coal entry No. 22, made April 23, 1907, by W. W. Baker for the Victor coal claim in the Kyak recording district, U. S. coal survey No. 38, is ready for patenting. Clarence Cunningham is attorney in fact.

Very respectfully,

C. C. HELTMAN,
Chief of Division.

MDT

This letter bears notation: Hold HHS on the face.

The CHAIRMAN. Do you know, Mr. Glavis, what those initials stand for, "HHS?"

Mr. GLAVIS. That is H. H. Schwartz.

The CHAIRMAN. This letter bears the notation: Hold HHS on the face.

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. "Same inclosed in envelope marked 3114. Assigned to cases Miss H.;" then following it "Love, H. K., S. A., Juneau, Alaska. Date, Jan. 6, 1908. Subject: Telegram. All Cunningham coal entries same status. Special. Mr. Schwartz. Referred to Division N." Are you able to give any explanation of that any more than any of us can by reading it?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Now, the next, January 4, 1908——

The CHAIRMAN. One moment. These letters that you have referred to were December 6, December 26, and January 3. Now, it was January 7 when the department, or the Land Office, sent the letter to Mr. Glavis notifying him that the claims had been clear listed, was it?

Mr. BRANDEIS. Yes, sir; this last was telegraphic communication that is referred to there.

The CHAIRMAN. So that the Land Office made no concealment about it? Shortly after this clear listing they informed Mr. Glavis about it.

Mr. BRANDEIS. They informed him of the fact that it had been done.

The CHAIRMAN. They made no concealment about it?

Mr. BRANDEIS. Certainly not; but they did it as a matter of letter, whereas these other communications were by telegram.

Mr. JAMES. Within 30 days after the first clear listing was directed, was it not, in the Cunningham case?

Mr. BRANDEIS. The letter to Mr. Glavis was dated January 7; the clear listing order appears to have been entered on December 26. That is the direction which Mr. Schwartz gives to Mr. Murphy. On page 462 is the letter of December 26, 1907. That is the first clear listing order from Division P. That is the division with which Mr. Glavis was connected.

The CHAIRMAN. That is December 26?

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. And January 27—

Mr. GLAVIS. A letter is written to him.

The CHAIRMAN. Notifying Mr. Glavis to that effect?

Mr. BRANDEIS. Yes, sir; which letter, in ordinary course of mail, he would receive on the 12th or 13th; as a matter of fact, he did not apparently get it. He probably was away.

Mr. JAMES. In this letter of December 6 saying that coal survey No. 71 is ready for patenting—Clarence Cunningham is attorney in fact, is he not—

Mr. BRANDEIS. Yes, sir; that is clear listing in the mineral division. That is Division N, of which Mr. Heltman is chief. In this Division P, as far as they are concerned, they are clear listed, and it was still waiting for the decision as to whether it was fraudulent or not, as to which Division P would make it.

Mr. JAMES. So Division N can refer to Division P and Division P can refer to Division N?

Mr. BRANDEIS. Precisely.

Mr. JAMES. I thought they came up from Division P to Division N.

Mr. BRANDEIS. Mr. Glavis can explain that better than I can.

Mr. GLAVIS. Division N can not take any action toward passing an entry to patent that has been called for by Division P until it receives a clear listing order from Division P.

Mr. JAMES. If that is true, then this letter of December 6, certainly in that view of it, referring to survey No. 71, had already been clear listed by Division P, because Division N—

Mr. BRANDEIS. No; they had it under investigation in that division at the same time; that is, Division N was investigating this with reference to its minerals.

Mr. GLAVIS. It is ready for patent so far as the regularity of the papers were concerned, but it had to first get a clear-listing order from Division P, whether there were any grounds for charges of fraud against it.

Mr. BRANDEIS. I call attention to that order, that clear-listing order, from Division N, not so much because it was ordered clear listed, but because Mr. Schwartz himself had noted on it that it would be held up; that is, he had recognized the grounds for investigation at that time and as being a matter which was not considered apparently by the Commissioner under the order of the clear list after Mr. Glavis went away.

Mr. OLMSTED. After all this correspondence, and after it had been clear listed, then, upon the recommendation of Mr. Glavis, they were stricken off. Is that right?

Mr. BRANDEIS. That is true. I have not put in all the letters, but I think they should all go in. Now, on page 462 is a letter of Mr.

Schwartz, and at the beginning of page 463 is a letter of January 4 of Mr. Schwartz to Division N, which reads as follows:

I have to advise you that under date of August 2, 1907, Special Agent H. K. Love reported that the following-named persons made coal entries at Juneau, Alaska, through Clarence Cunningham as agent, and recommended that the same be favorably considered.

Then follows the Cunningham claimants.

It also appears that Clarence Cunningham made a coal entry in his own behalf.

Upon the above-mentioned report the entries above referred to are clearly listed as to this division. Reference is had to your letters addressed to this division, dated November 5 and November 6, 1907.

Those are the letters that have just been referred to—that is, Mr. Schwartz in that letter of January 4 gives the formal notice to Division N, which he had directed Mr. Murphy, on December 26, to give, and also shows that it is on this report of August 2, 1907—that is, the Love report of August 2, 1907—that they were commenting on.

Mr. JAMES. I thought that Love had been taken out of that division.

Mr. BRANDEIS. That, as we contend, is the fact. The precise point for which I introduce it is this: This conversation with Mr. Ballinger—all of these proceedings with Mr. Schwartz and Mr. Ballinger—took place in the middle of December, and within the next fortnight action was taken with respect to these Cunningham claims without his knowledge at the time which directly refers to that action. It is that clear listing of those claims, after all, that had occurred in the conferences between Mr. Schwartz and Commissioner Ballinger which formed one of the important facts requiring investigation by this committee and in connection with this further fact, as appears by the next telegram, on page 463. I introduce the telegram of January 6, 1908, as follows:

COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

Answering telegram, 4th, all Cunningham coal entries same status.

LOVE.

That telegram of July 4, which is referred to, is not in this record; that is Senate Document 248.

The CHAIRMAN. What are you reading from now?

Mr. BRANDEIS. Page 463 of Senate Document 248, which refers to a telegram of the 4th. It is an answer to the telegram of the 4th. It says, "Answering telegram, 4th." It is in the middle of the page.

Mr. McCALL. And you have asked for that telegram?

Mr. BRANDEIS. I have asked for the telegram to which this is an answer.

Mr. McCALL. Mr. Chairman, would it not be well to decide just what the status of this document, No. 248, is? A great many papers are admissible, but would you regard them all as evidence without the formal introduction of them by counsel, or only such papers as are introduced? It seems to contain a copy of a good many letters, papers, and telegrams.

The CHAIRMAN. I believe that all the papers that Mr. Brandeis offers are evidence—telegrams and letters being strictly in evidence before the committee—but of course as a committee we have the right to decide what is admissible.

Mr. McCALL. Would it not be well to decide what the status of the book is as a whole?

Senator FLINT. As far as this committee itself is concerned, I suppose this has no other bearing than any other public document?

Mr. McCALL. It is referred to the Committee on Public Lands, and we have copies of it and are referring to it.

Mr. OLMSTED. It will be referred to by counsel in the argument.

Mr. GRAHAM. We might ascertain what Mr. Brandeis intends here. Is it your intention, Mr. Brandeis, to introduce the entire contents of this Senate Document No. 248?

Mr. BRANDEIS. There is nothing in the document which I am not perfectly ready to have introduced, but it seems to me that for the intelligent presentation of it, it was absolutely necessary to entirely rearrange the document.

Mr. McCALL. I was not finding fault with your procedure, Mr. Brandeis. It is very proper that we should direct our attention to certain things in the book. I was simply trying to fix the status of the document before the committee, whether we should regard it as being in evidence before us.

Mr. DENBY. If you are satisfied that the statements are accurately introduced here, why not introduce the entire volume in evidence, and make your criticism of it?

Mr. BRANDEIS. I think it should all go in, but there are certain papers as to which we desire the original, because we think there are notations upon them.

Mr. DENBY. You are referring constantly to the book by page and line, and the book is not in evidence. Why do you not put it in?

Mr. BRANDEIS. I would be very glad to put it in.

Mr. OLMSTED. I suppose part of it does not belong to Mr. Brandeis's side of the case.

Mr. BRANDEIS. It certainly does not. There are arguments of Mr. Dennett and Mr. Schwartz and others.

Mr. DENBY. I mean merely for the purpose of reference. You can put the book in, and then you can refer to it by page and line.

Mr. BRANDEIS. I am perfectly willing to act on the suggestion of the committee.

Mr. GRAHAM. I understand that you are willing that it should be offered in evidence, but that you do not consider that it is in logical order.

Mr. BRANDEIS. It is almost impossible to find certain papers; it is unindexed.

Mr. JAMES. I think we could refer to the page number, and the stenographer could copy it without putting in the whole book.

The CHAIRMAN. It seems to me that perhaps the clearest way would be to have Mr. Brandeis offer these letters as they are in the record—that is, offer them as evidence and consider them as evidence, and unless some question is raised as to whether they are true copies or not, they can stand as evidence in the case.

Mr. BRANDEIS. That is entirely satisfactory.

The CHAIRMAN. There is a good deal in this book outside of this; there is the report of Mr. Glavis to the President; there is a letter from Mr. Ballinger containing his explanation to the President in reply to these charges; there is a letter from Mr. Dennett, the commissioner; and a letter from Mr. Schwartz; and each of them con-

tains a statement of its own. I take it that those mere statements are in the shape of letters and are not properly in evidence before this committee, or should not be. They were matters submitted to the President and were simply statements by those gentlemen, but I think the best way for us is to have Mr. Brandeis go on as he did this morning and cite the letters that he wants us to consider as evidence, and if there is any dispute about the genuineness or correctness of the letters, we can take them as they are found in this book. Is there any objection to that course by the committee? There being no objection, it is so ordered.

Senator FLINT. I presume that other than this one matter that Mr. Brandeis has called our attention to that he has called for the originals in certain instances, and stated as a reason that there were indorsements that were not contained in the document.

The CHAIRMAN. Certainly; whatever documents are not here he has submitted a list of and we will try to get them.

Mr. BRANDEIS. I next introduce, acting upon that suggestion, the telegram of Love to the Commissioner of the General Land Office, which appears on page 463, dated January 11, 1908, Juneau, Alaska.

Plats Cunningham coal ordered seventh, mailed eighth.

(Together with envelope marked on face as follows: 6127. (Pencil) (38231.) Love, H. K., Juneau, Alaska. Dated January 11, 1908. Subject: "Telegram." Plats Cunningham coal ordered seventh, mailed eighth. Hand to Mr. Carr. O. K. Carr. Referred to Div. P.)

Mr. Glavis, who is Mr. Carr?

Mr. GLAVIS. Mr. Carr was then the private secretary of Commissioner Ballinger. He is now his private secretary.

Mr. BRANDEIS. Private secretary to Secretary Ballinger?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And he is the same Mr. Carr that you have referred to as having had the conversation with?

Mr. GLAVIS. Yes, sir; he was out there.

The CHAIRMAN. Is he the private secretary to Commissioner Ballinger also?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Mr. Chairman, you will note that the telegram of the 7th, to which this is an answer, is not introduced now. That is also among the papers which we have called for. It does not appear in this printed record. I will introduce now the letter of Assistant Commissioner Dennett to Mr. Glavis, which appears on page 465. It is as follows—

The CHAIRMAN. Mr. Brandeis, excuse me. Do you think it is necessary for you to read this letter. We have it in the book before us.

Mr. BRANDEIS. I only read it because it is important and I wish to base a question on it that I am going to ask.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., February 5, 1908.

Mr. L. R. GLAVIS.

Chief of Field Division,
Portland, Oregon.

SIR: I am in receipt of your letter of January 22, 1908, asking for the further suspension of certain Alaska coal entries, known as the Cunningham group. These entries had been clear listed upon a report of Special Agent Love, and subsequently upon wire from you the suspension was reinstated. In concluding your letter you say that:

"I expect to be able to submit a report thereon within a few months."

This is not sufficient. The office feels that applicants to purchase coal lands in Alaska have, for reasons not in any way chargeable to you, already been considerably delayed.

You will, therefore, on receipt of this letter proceed to Spokane, and complete your investigation and make final report as to these claims.

I inclose you herewith copy of letter and telegram reports from Special Agent Love upon which the cases in question were clear listed. The office will also give consideration to the other matters referred to in your letter of the 22nd ult.

Very respectfully,

FRED DENNETT, *Commissioner.*

What papers were inclosed with that letter from Mr. Dennett?

Mr. GLAVIS. Love's report of August 2, 1907, which was referred to this morning.

Mr. BRANDEIS. Was there any paper inclosed with that letter, or a copy of any paper which you had not already examined, and the effect of which you had not discussed with Mr. Schwartz when you were in Washington in December?

Mr. GLAVIS. No, sir; there was not any other paper. When I wrote my letter of January 22 for the report referred to by the assistant commissioner in his letter of January 7—the report of August 2, 1907, by Special Agent Love—I imagined he had made another report on that date which I did not have, because I could not understand how they could consider that August 2, 1907, report as the basis of patenting these coal claims. They had not considered it. It had been about five months. By that time we had not taken any action with a view to patenting the claims. When I was in Washington on that report I thought maybe it was some other report that I had not seen when I was there.

Mr. GRAHAM. Was there any new matter in this report on which to base a change of action; and if there was, what was it?

Mr. GLAVIS. Do you mean a favorable change on that?

Mr. GRAHAM. Yes; in the way of clear listing.

Mr. GLAVIS. There was not any except a statement that it was his information that that was an unlawful act.

The CHAIRMAN. After that Love report and between the order for clear listing, were there not one or two reports made by Jones?

Mr. GLAVIS. Yes, sir; August 10, August 13, 1907, and one of November 1, 1907.

Mr. BRANDEIS. Is there not also one of December 2, 1907?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Did Jones report favorably to the clear listing of these claims?

Mr. GLAVIS. No, sir.

Mr. JAMES. It was to the contrary, was it not?

Mr. GLAVIS. Yes, sir; and his report, especially the one of November 1, 1907, recommended a further investigation of all the Alaska coal cases.

Mr. JAMES. Where was Love when this land was clear listed?

Mr. GLAVIS. He was in Alaska.

Mr. JAMES. What was he doing?

Mr. GLAVIS. He was a special agent there.

Senator FLETCHER. When did you first notify him discontinuing his service as special agent?

Mr. GLAVIS. I do not know; I think that letter is referred to in the record. It was some time about the middle of January.

Mr. BRANDEIS. These letters do not appear in the printed record, but we have called for them. There appear to have been two letters sent by Mr. Glavis, one on January 11 and the other January 31. There does not appear to have been any action. These letters are called for among the papers in the list which I have given you. I desire to introduce at this time—not especially through this witness—what appears in the record in this printed paper as to the extent and value of the coal land, a report made by the expert of the Cunningham claimants.

The CHAIRMAN. On what page is it?

Mr. BRANDEIS. It appears on pages 56–60. There are also some other papers in the record—

The CHAIRMAN. Let me ask you, is that in a government report or a report to Mr. Cunningham—that Hawkins report?

Mr. BRANDEIS. I think it is a report to Mr. Cunningham. Mr. Glavis can answer that. It is this report which appears as Exhibit 20.

The CHAIRMAN. Commencing on page 56 and ending on page 60.

Mr. GLAVIS. That is a report by an expert employed by Cunningham to make an investigation as to the manner in which the coal should be mined.

The CHAIRMAN. That is a report made by him to Mr. Cunningham.

Mr. BRANDEIS. Yes, sir. There is also another opinion, which can hardly be dignified as a report; it is merely a letter bearing on the subject.

The CHAIRMAN. Do you offer this report in evidence?

Mr. BRANDEIS. I do offer it in evidence as a statement of one person who professes to know the facts in regard to the Cunningham land, not that it is necessarily true, but that it is a contention that that was the fact.

The CHAIRMAN. It commences on page 56 and ends on page 60, and is marked "Exhibit No. 20."

Mr. BRANDEIS. Yes, sir; and likewise there is also another letter bearing on this subject, although the dates are not the same, on page 294, being a letter addressed to Secretary Garfield by one M. K. Rodgers, which relates to the extent and character of the lands. Of course, the purpose is merely as showing—

The CHAIRMAN. Do you offer that in evidence?

Mr. BRANDEIS. Yes, sir; merely as a statement of some person. I, of course, can not vouch for it, and do not propose to say that the statements are necessarily true; but there was a claim and contention and belief that these coal lands were very extensive.

The CHAIRMAN. One minute; let me suggest to you, to avoid arguing as to the effect of the evidence, in the interest of saving time. State what you want to put in and put it in, but do not argue to the committee on the effect of the evidence. It is not because your argument is objectionable, but because it delays the proceedings.

Mr. BRANDEIS. I merely wanted to avoid any possible misunderstanding. I, of course, do not know to what extent these reports are credible evidence on the facts that they state. They are not sworn to, but are merely evidence that some persons who profess to know put a very great value upon this land, and to a very large extent. I

merely wanted the committee to understand that I was not vouching for the truth of the statements.

The CHAIRMAN. The committee will now take a recess until 2 o'clock, and at that time counsel and Mr. Glavis will be kind enough to appear.

(The committee accordingly, at 1 o'clock p. m., took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 p. m.

The CHAIRMAN. A quorum of the committee is present, and we will proceed, Mr. Brandeis.

Mr. BRANDEIS. At the time that you sent your telegram and letter of January 22, 1908, protesting against the clear listing, had you up to that time collected any evidence on the Cunningham claims which was not in the possession of the General Land Office when you left there on December 19 with copies of all the papers?

Mr. GLAVIS. No, sir; I did not make any investigation during that time.

Mr. BRANDEIS. Then there was there at that time, among others, the affidavit of August 5, 1907, taken by Jones, which appears on page 281 of the record?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That I wish to put in—the affidavit of August 5, 1907, taken by Jones.

The CHAIRMAN. At what page?

Mr. BRANDEIS. Page 281 of the record. One of the Cunningham claims; Exhibit 10.

(The letter is as follows:)

EXHIBIT 10.

[Exhibit No. 21 of Jones Report.]

STATE OF WASHINGTON,

City and County of Spokane, ss:

Fred H. Mason, a citizen of the United States, of lawful age, whose residence and post-office address is No. 214 Eighth avenue, Spokane, Wash., being duly sworn, hereby on oath deposes:

I am the identical Fred H. Mason who on July 4, 1904, filed notice of location for coal claim "Adrian" in the Alaska district. On February 21, 1906, I filed declaratory statement No. 185 for said land, and on April 11, 1907, I made entry No. 16 for the same, all through my agent, Charles Cunningham.

We—that is, the group of Spokane and other parties who filed through Cunningham as agent—have each put in \$2,000 to \$3,000 in developing said coal lands and have paid the government price for the same.

We have not sold or agreed to sell our claims. Each member or individual of the party that filed is well able, financially, to pay for his land. I do not think that any single individual would agree to sell his claim.

We have often talked of what we were going to do with our claims, both before and after making entry. The popular idea with us is that after we get our titles from the Government we will make an effort to get a railroad to our lands, so as to get the coal out for shipment. We thought that if it were perfectly legal we would form a company and issue stock for the securing of bonds for the building of a road to this land, but we don't want to do anything that is not regular. Or we thought if we could get somebody to take a part of the stock and put a railroad in we might do that.

We realize that it would be impossible for any individual claimant to put up money to secure transportation.

A large portion of the money invested in this land has been used in developing the claims.

Mr. Cunningham, as I understand it, wrote the Interior Department, asking if instead of doing a small amount of development work on each one of the 33 claims located by him, could he use the lump sum to develop certain ones of the claim, and I understand that he received a favorable reply to his letter and has gone ahead along these lines.

There have been several parties who have approached Mr. Cunningham with a view to investing money in a railroad to develop and transport the coal from our claims, and, if the titles are found to be good, a deal with an eastern representative of the American Smelting and Refining Company, which is the Guggenheim outfit, may be closed with us.

I am glad the department has sent its representative here to look into this matter, because we want to do the right thing in the matter. We would like to get a ruling on the matter, as to whether or not we can do what we want to do in connection with this coal land, and, of course, if we can't combine and interest others in our proposition we want to know it so as to be able to go ahead and handle our claims individually.

(Signed) FRED H. MASON.

Subscribed and sworn to before me at Spokane, Wash., this 5th day of August, 1907.

(Signed) HORACE TILLARD JONES,
Special Agent, General Land Office.

A. B. Campbell, being duly sworn, hereby on oath deposes:

I have read the above statement of Fred H. Mason with respect to his coal claim in Alaska, and I hereby state that the same circumstances apply to my own coal claim, being entry No. 13 for the "Collier" coal claim.

(Signed) A. B. CAMPBELL.

Subscribed and sworn to before me at Spokane, Wash., this 5th day of August, 1907.

(Signed) HORACE TILLARD JONES,
Special Agent, General Land Office.

Mr. BRANDEIS. And you will observe there is attached to it a confirmatory affidavit of A. B. Campbell. He is another of the Cunningham claimants, is he not, Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I desire also to call attention in the report of Jones, of August 13, which has been put in evidence, but was not read. I call attention to the last sentence of that report, namely—it appears on page 33—the last sentence. The report begins on page 26, but it closes on page 33, and I call attention to the last sentence, which is:

I would therefore again recommend that these entries be carefully investigated by an experienced and fearless agent.

The CHAIRMAN. What is the date of that?

Mr. BRANDEIS. The report is dated August 13, 1907.

The CHAIRMAN. It commences on page 26?

Mr. BRANDEIS. It begins there, but the paragraph to which I refer is on page 33.

I will ask you also, Mr. Glavis, without my reading it, to look at the list of entrants which is given in that report, together with a list of the agents.

The CHAIRMAN. You mean in that report of Jones?

Mr. BRANDEIS. The report of August 13, the same report of Jones. There is a list of the claimants there, as you will see, in which Cunningham appears as the agent, as there stated; and it also gives the

residences of those persons. I do not want to take the time to read them, but the committee will see that as soon as they examine the report.

I will also introduce in evidence the letter of Mr. Love to Mr. Glavis, which appears on pages 9 and 10 of the record. It is the letter of February 17, 1908, which, as you will see, is in reply to the letter of January 31, which we have not, but which is among the papers which we have called for.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Juneau, Alaska, February 17, 1908.

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: Replying to yours of January 31 ultimo, R. E. reports to G. L. O. in the various coal locations comprising what is commonly known as the "Cunningham group," and calling for copy of report therein, would say that applications for entry of these locations were made at different dates, and that officially each claim is distinct or was so considered by me. Therefore, there is not any single report as you require, but a letter to the R. and R. at Juneau, in each case, including an affidavit I secured from each applicant, and with statement that, considering the fact set forth in such affidavit and other information had, I recommend entry.

(I believe the instructions do not provide that an agent should "recommend," and it is not my custom now.)

The further information consisted of many interviews with Cunningham and various other persons in and about Katalla, from a consensus of which a fairly reliable opinion of the real status could be determined, although the individual interviews and statements could not well be recorded. A principal one was that with the father of Fred C. Davison the first day I was in Katalla, and while yet utterly unknown to him; while sitting on the shore, throwing pebbles into the surf, he told me what considerable sums his son had put into his claim, and how; of his uncertainty that it was worth it, and how he had stopped off on his way to Seward to try to determine for his son whether to hold or let go; that it might be years after entry before anything could be realized, and on my question, that there was not any plan amongst the various locators as to future disposition.

Everything said, and the manner, indicated that he told the truth. From all I reasoned that the absolute requirements of the law were being met by these people to a very considerably faithful degree, though likely not covering what might be considered by some as the probable intent; the perfect nonexistence of any intent or hope, however indefinite, of final consolidation by locators or vendees. I am not simple enough to believe but that coal locators hope, at least, to join with others for development or sale, after entry.

Later, upon verbal order of the honorable commissioner, I wrote the General Land Office on July 24, 1907, requesting withholding of patent in entry No. 180, Ignatius Mullen, pending inquiry into relations between entryman and his father, P. M. Mullen, receiver, Juneau: November 12, 1907, I reported therein, renewing recommendation that patent issue.

After entry, to wit, August 2, 1907, I advised the General Land Office that Cunningham had informed me of efforts pending, initiated subsequent to entry, looking to the promotion of a company and the pooling of the lands. This was because in a conversation in his office in Seattle, Judge Ballinger stated that such a proceeding prior to issuance of patent was not allowable, and it was plainly my duty to advise of such a material fact. The foregoing, I believe, covers all material action taken in these matters. Inclosed you will find a blank copy of the affidavit referred to, secured from each applicant.

Respectfully,

H. K. LOVE,
Special Agent, General Land Office.

Mr. BRANDEIS. And I will specifically call your attention to the last paragraph of that letter, which appears on page 10, and which is as follows:

After entry, to wit, August 2, 1907, I advised the General Land Office that Cunningham had informed me of efforts pending, initiated subsequent to entry, looking to the promotion of a company and the pooling of the lands. This was because in a conversation in his office in Seattle Judge Ballinger stated that such a proceeding prior to issuance of patent was not allowable, and it was plainly my duty to advise of such a material fact. The foregoing, I believe, covers all material action taken in these matters. Inclosed you will find a blank copy of the affidavit referred to, secured from each applicant.

Now, Mr. Glavis, other than the communications with Mr. Love, what did you do, in January, 1908, with respect to the investigation of the Alaska coal claims?

Mr. GLAVIS. I was getting general information. Anybody that I thought would know anything about it, I would ask them. I did not start the investigation then; it was merely preliminary. In all big conspiracy cases of this kind that are successfully prosecuted one has first to secure data relative to the people involved in order to determine who would be the best persons to approach in order to secure some evidence further to go on, to get all the facts. I mean by that, that always among a group of men you will find some who give information easier than others will; and that was the work that I was doing at that time.

Mr. BRANDEIS. How extensive has been your experience?

The CHAIRMAN. Where were you doing that work—in Seattle?

Mr. GLAVIS. No; around Portland. I met a man down in California; I was down in San Francisco attending the trial of a case in a United States court there, and I met another government official there who knew about the Cunningham claims, and he gave me a good deal of information about the Cunningham group. He gave me the names of those whom he thought would be honest and tell the whole transaction, which was very valuable to me; in fact, I commenced my investigation of those claimants whom he had told me about.

Mr. BRANDEIS. How much experience had you had prior to that time in the working up of conspiracy cases—cases of the nature involved in the Alaska coal frauds?

Mr. GLAVIS. I worked on the Portland Coal and Coke Company cases; I worked up all that evidence alone; I assisted Mr. Hoyt in the investigation of the Wilson Coal Company cases, which had been worked up partially by another special agent before.

Mr. BRANDEIS. Had you been connected with any other conspiracy cases that did not relate specifically to coal lands?

Mr. GLAVIS. Oh, yes. I had worked up quite a number of conspiracy cases before that time.

Mr. BRANDEIS. Well, now, when did you begin the actual collection of the evidence, as distinguished from the preparation to take the evidence?

Mr. GLAVIS. I left Portland about March 2, 1908. I took Special Agent H. T. Jones with me, and we went to Wallace, Idaho; there we interviewed the coal claimants in the Cunningham group that were residing at Wallace and secured the affidavits and secured a good deal of documentary evidence that was of material assistance in showing the conspiracy.

Mr. BRANDEIS. Are the affidavits that you referred to as being secured at that time the affidavits of Henry White and of Orville D. Jones, which are dated March 5, 1908, and of Frank F. Johnson, of the same date, and of F. Kushing Moore, of the same date?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I will introduce in evidence now those affidavits.

The CHAIRMAN. On what page are they?

Mr. BRANDEIS. They appear on pages 509 and 510 of the record. (They are as follows:)

Alaska 3.

STATE OF IDAHO, *County of Shoshone, ss:*

Henry White, a citizen of the U. S., of lawful age, being duly sworn, hereby on oath deposes:

My post-office address is Wallace, Idaho. I am the identical person who made a coal land entry in the Kayak recording district, Alaska. I gave Clarence Cunningham a power of attorney to act as my agent. I took up this claim upon the representations of Mr. Cunningham as to its value for coal. Since filing on said coal claim I have paid out various sums of money, including the payment to the Government for the said land. Cunningham was agent for a number of other coal claimants for land in said Kayak recording district, Alaska. The money was expended by Cunningham in developing the said claims as a whole. I only attended one meeting of the coal claimants, which was last fall. The formation of a company was not formally discussed. But I understood that the question of getting together and putting in a railroad in connection with our claims has been discussed informally among the claimants. Cunningham has had absolute control over the disbursement of moneys that I have paid in on this land. I know nothing whatever about the details of the expenditures nor have I any writing showing that I have paid in the sum above referred to, except statements made in writing by Cunningham.

(Signed) HENRY WHITE.

Subscribed and sworn to before me at Wallace this 5th day of March, 1908

(Signed) HORACE TILLARD JONES,
Special Agent, G. L. O.

Alaska 3.

STATE OF IDAHO, *County of Shoshone, ss:*

Orville D. Jones, being first duly sworn, on oath depose and say:

My post-office address is Wallace, Idaho; I am the identical person who made coal entry No. 30, being for lands in U. S. coal land survey No. 57, known as the Avon coal claim, in the Kayak recording district, Alaska.

Some time in 1903 I was asked by Clarence Cunningham if I desired to take a coal claim. After he had fully explained the proposition and advised me as to extent of the coal field and the names of the persons going into it, I decided to take a claim and gave the said Cunningham a power of attorney to act as my agent. Since then I have been assessed from time to time and have paid Cunningham nearly forty-two hundred dollars (\$4,200.00), which included the price of the land. Cunningham was agent for thirty-one other entrymen, who, like myself, advanced various sums of money; the money was expended by Cunningham to develop and improve the coal field as a whole. Nearly all the thirty-two coal claimants are acquainted with each other; they are men of the best business standing and prominence in their respective localities. The matter of the formation of a company was never formally discussed at any of our meetings, but we have discussed this question among ourselves, as we were well satisfied that we could not handle the claims individually; anyone who is at all acquainted with coal mining knows that one claim could not be handled profitably (especially in Alaska, where expenses are so great), since the large expense preliminary to the opening of a coal field would not warrant it. We have therefore understood among ourselves that when title had been secured we would form a company and combine the entire group; this was, however, positively the only understanding we had—no written agreement or any written instrument whatsoever. The Guggenheim syndicate has nothing to do with these claims. In fact, last

spring he made us an offer which a few wanted to accept, but the majority of the coal claimants refused to consider it, and the others have abided by the majority.

(Signed) ORVILLE D. JONES.

Witness:

HORACE TILLARD JONES.

Subscribed and sworn to before me this 5th day of March, 1908, at Wallace.

(Signed) L. R. GLAVIS,
Chief Field Division.

Mr. BRANDEIS. What else did you do at that time?

Mr. GLAVIS. As soon as I got through taking that evidence, Mr. Jones and I both concluded that the time was ripe to see Mr. Cunningham, so we hurried to Seattle on March 6, 1908, and we called at Mr. Cunningham's house in the morning, and I introduced myself to Mr. Cunningham, and I also introduced Mr. Jones, and I told him we were investigating the Cunningham coal cases, and that we had come to see him about them. He said that he had heard that there had been another complaint made against them, and he understood that they were charged with being dummies for the Guggenheim interests, and he wanted to find out who made the complaint. I told him I could not tell him, and I could not tell him the nature of the complaint, but that if he had any evidence, if his record would show that they were not in league with the Guggenheims, I would like to get all the information from him, and he very willingly offered to show me all his books and records, and Mr. Jones and I went up to his library and he brought us the different books. I looked through the journal, and Mr. Jones looked through the ledger and other books that he had there. I saw that on the first page of the journal there was a statement, a memorandum of an agreement between the different Cunningham claimants that was entered into away back in 1903, apparently. So I told him that I had the papers in the hotel downtown and that I would like to check them up with the books to ascertain whether they were correct or not.

Mr. BRANDEIS. Those were the papers that you had procured at Wallace from the other affiants?

Mr. GLAVIS. Yes; I had those, and I wanted to get the book, of course. I wanted to have a copy of it made. I did not tell him that. He said that he was perfectly willing for us to take the books; so we took them down and made an appointment with Mr. Cunningham at 2.30 to take his affidavit, or 3 o'clock, and we met him that afternoon at the Ranier Grand Hotel, where Mr. Cunningham dictated his affidavit to a stenographer.

Mr. BRANDEIS. Is that the affidavit which appears on pages 469 and 470 of the record?

Mr. GLAVIS. It was sworn to before me and witnessed by Mr. Jones.

Mr. BRANDEIS. That is the affidavit which appears on pages 469 and 470 of the record?

Mr. GLAVIS. Yes, sir; that is the one.

Mr. BRANDEIS. That is the affidavit that you refer to?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And will you look now at pages 474 to 492 of Senate Document No. 248 and state whether that is the journal, the Cunningham journal, which you referred to as having been taken down to the hotel?

Senator SUTHERLAND. What page is that?

Mr. BRANDEIS. Page 474.

Senator SUTHERLAND. Four hundred and seventy-four and 475.

Mr. BRANDEIS. It runs from 474 to 491.

Mr. GLAVIS. Yes, sir; that looks like it. I see several statements in there that I recollect from the original journal.

Mr. BRANDEIS. I will introduce in evidence that affidavit, the Cunningham affidavit, of March 6, and this journal, the Cunningham journal.

(The affidavit and journal are as follows:)

PAGE 1.

WALLACE, IDAHO, Feb. 1st, 1903.

Have options on several coal properties in Alaska, having examined and sampled same in Oct. & Nov. last, with the result that I have agreed to take up the options and am entering into verbal agreements with the subscribers & whose names will appear on the following pages, whereby each of said subscribers shall have one claim of 100 acres recorded in his name and will own same individually until such time as title can be secured for same. After this is done each subscriber agrees to deed his interest to a company to be formed for the purpose of developing and marketing said coal and receive stock in the said company in payment for same, but it is further agreed that each subscriber shall have one-eighth (1/8) of his stock issued to Clarence Cunningham in consideration of his services in securing said land. This 1/8 interest to be issued to the writer of these pages is to be exclusive of his own holdings, upon which he agrees to meet and make his payments in common with all others who enter into this agreement, and is understood to be 1/8 of the entire stock of the said company.

In carrying out the above plans the following subscribers paid amounts as follows, those paying first getting in at a lower rate than afterwards, when options were paid off and surveys made:

PAGE 2.

WALLACE, IDAHO, Feb. 9th, 1903.

3	Cash %.	To sundries	\$5,500	
10	Miles C. Moore,	Walla Walla		\$500
15	Fred C. Mason,	Spokane		500
21	J. G. Cunningham,	"		500
27	F. C. Davidson,	Oaksdale		500
31	Michael Doneen,	"		500
35	F. Cushing Moore,	Wallace		500
41	Hayes and Jones,	"		500
45	Clarence Cunningham,	"		500
50	Francis Jenkins,	Moscow		500
55	C. J. Smith,	Seattle		500
60	Walter and Robt. Moore,	W. W.		500
3	65			
May	15-31	W. W. Baker " "	9,600	600
	71	Al. Page, Wardner		750
	75	Arthur D. Jones, Spokane		750
	80	John A. Finch, "		750
	90	A. B. Campbell, "		750
	100	A. K. Neill, "		750
	105	H. M. Davenport, "		750
	110	I. N. Campbell, "		750
	115	C. H. Moore, "		750
	121	F. C. Burbridge, "		750
	125	Henry Wick, Youngstown, O.		750
	135	Hugh B. Wick, "		750
	141			
Sept.	3	Jos. H. Neill, Wallace		750
(In lead pencil)			15,100	15,100
			15,100.00	15,100

PAGE 3.

WALLACE, IDAHO, Feb., 1903.

Brought forward.....	\$15, 100	\$15, 100
3 Sundries Dr. to cash.....		\$20. 20
145 Traveling exp. %.....	150. 10	
151 Supply.....	170. 10	

Above items include expenses incurred securing subscriptions, trip to Alaska in Feb. to pay options, purchasing supplies and provisions for trip.

March 1 to 31.

3 Sundries, to cash.....		7, 137
161 Coal land pur. %.....	6, 600	
145 Traveling exp. %.....	55	
165 Genl. exp. %.....	164	
171 Labor.....	318	

Genl. expense contains items paid for recording claims, boat hire, and fares for self and men to and from Kayak Catala and the coal fields. Labor % is cash spent in surveying claims.

April 1 to 30.

3 Sundries, to cash.....		196. 50
145 Trav. expense %.....	124	
165 Genl. " ".....	72. 50	

Fares, hotel and freight bills for engineer and writer between Seattle and coal mines.

(In lead pencil)	22, 753. 70	22, 753. 70
	22, 753. 70	22, 753. 70

PAGE 4.

WALLACE, May, 1903.

Brought forward.....	22, 753. 70	22, 753. 70
3 Sundries, to cash.....		3, 015. 01
171 Labor %.....	428. 70	
171 Labor % for April.....	335. 75	
165 General expense %.....	45	
145 Traveling " %.....	257. 60	
180 Horse & eqpmt. ".....	515. 90	
151 Supply.....	1, 432. 06	
(In lead pencil)	3, 015. 01	

June.

3 Sundries, to cash.....		4, 304. 05
151 Supply %.....	326. 55	
161 Coal-land pur. %.....	2, 850	
145 Traveling exp. %.....	100	
165 General " ".....	40	
171 Labor.....	987. 50	

July.

3 Sundries, to cash.....		1, 304. 57
171 Labor %.....	1, 076. 37	
165 General expense %.....	50. 20	
145 Traveling expense %.....	65	
151 Supply.....	104	
(In lead pencil)	31, 377. 33	31, 377. 33
	31, 377. 33	31, 377. 33

PAGE 5.

CATALLA, ALASKA, August, 1903.

Brought forward.....	33, 137. 33	33, 137. 33
3 Sundries, to cash.....		1, 035. 75
151 Supply % S. Bros. Co.....	162. 05	
145 Traveling expense %.....	64. 50	
165 General " ".....	59. 20	
171 Labor " advanced.....	750	

Having left for Seattle before the time books were made up, advanced 750 for labor %.

September.

3 Sundries, to cash.....		3, 986. 32
180 Horse & eqpmt. %.....	68. 95	
145 Traveling exp. %.....	50	
151 Supply.....	1, 178. 40	
" " % S. Bros. & Co.....	657. 82	
" " Aggers B. & Co.....	13. 15	
" " Frt. on powder.....	6. 50	
171 Labor % Sent currency by Mr. Steele to Kayak for Hartline to meet P. R.....	2, 011. 50	

(1000)

Have agreed with Mr. W. D. Heyburn in consideration for his services as attorney to carry him for one claim of 160 acres in the coal, free of cost to him, and he agrees to do all our legal work in procuring titles, etc., free of expense to us.

38, 159. 40	38, 159. 40
-------------	-------------

PAGE 6.

CATILLA, ALASKA, Sept., 1903.

Brought forward.....	\$38,159.40	\$38,159.40
3 Cash, to sundries.....	6,000	250
90 A. B. Campbell.....		250
110 I. N. Campbell.....		250
115 C. H. Moore.....		250
125 Henry Wick.....		250
135 Hugh B. Wick.....		250
80 John A. Finch.....		250
121 F. C. Burbridge.....		250
15 Mason & Peel.....		250
75 Arthur D. Jones.....		250
105 H. M. Davenport.....		250
21 J. G. Cunningham.....		250
27 F. C. Davidson.....		250
31 Michael Doneen.....		250
71 Alfd. Page.....		250
65 W. W. Baker.....		250
55 C. J. Smith.....		250
100 R. K. Neill.....		250
141 Joseph H. Neill.....		250
10 Miles C. Moore.....		250
60 Walter & Robt. Moore.....		250
50 Francis Jenkins.....		250
45 Clarence Cunningham.....		250
35 F. Cushing Moore.....		250
41 Jones & Haynes.....		250
	44,159.40	44,159.40

PAGE 7.

CATILLA, ALASKA, Oct. 1903.

Brought forward.....	44,159.40	44,159.40
3 Cash To sundries.....	3,000	1,000
90 A. B. Campbell 10/7.....		1,000
138 H. W. Collins—Garfield—10/12.....		1,000
171 Labor % Dr.....	489.50	489.50
3 To cash.....		
Bal. due on Aug. pay roll, full amt. due for mo.....	\$1,239.50	
Less amount paid in August.....	750	
3 Sundries To cash.....		3,301.72
151 Schw. Hdwr. Co. on % 10/7.....	500	
151 Supply % Gorham Rub. Co.....	48.22	
151 " " Wash. ".....	114.77	
151 " " Schw. Hdwr. ".....	100.37	
151 " " ".....	84.06	
180 Horse Eqpmt % Lilly Borgardus Co.....	178.21	
151 Supply Aggers B. & Co.....	119.30	
151 " % A. C. Co. S. S. Bertha.....	146.68	
151 " " L & K Ltg. charges.....	74.12	
171 Labor " P. R. 3 Camps.....	1,858	
145 Trav. exp. % Hartline 35 ^{as} CC 40.....	78	

PAGE 8.

Brot. forward.....	50,950.62	50,950.62
3 Sundries To cash.....	50,950.62	3,121.40
184 Mach. & boat % river boat.....	400	
186 Eng. & survey " C. S. Hubbell.....	48	
151 Supply " c/s hams. T&C.....	19.80	
151 " " Pac. C. Tdg. Co.....	70	
" " " cash items.....	2.80	
180 Horse & eqpmt " Duncan & Sons.....	18.75	
" " " S. S. Santa A.....	105	
145 Trav. expense ".....	52.75	
165 Genl. ".....	57.20	
189 Salary " 7 mo. at \$200, May to Nov. 30.....	1,400	
171 Labor " P. R. for Nov.....	947.10	
	(In lead pencil)	
3 Cash % Dr.....	3,121.40	24
151 Supply % Sold 3 pr gum boots at 8.00.....	24.00	
Gave contract to Blomquist of Seattle to build a river boat, size 1. 30 ft., beam 7 ft., bottom 5 ft., height 2 1/2 ft. all complete and fitted with a 10-h. p. N. & S. gasoline engine. Pilot house and canvas cover painted and ready to deliver at any dock in Seattle for \$900.00 (ordered extra set propeller blades, extra gasoline tank to be put in at our expense, paid on %.....	400	

PAGE 8.

(In lead pencil) 54,096.02 54,096.02
54,096.02 54,096.02

PAGE 9.

CATILLA, ALASKA, Nov. 1903.

Brought forward.....	\$54,096.02	\$54,096.02
3 Cash % to sundries.....	67.50	
90 A. B. Campbell.....		250
110 I. N. Campbell.....		250
115 C. H. Moore.....		250
125 Henry Wick.....		250
135 Hugh B. Wick.....		250
80 John A. Finch.....		250
121 Fredk W. Burbridge.....		250
15 Mason & Peel.....		250
75 Arthur D. Jones.....		250
105 H. M. Davenport.....		250
21 J. G. Cunningham.....		250
27 F. C. Davidson.....		250
31 Michael Donsen.....		250
71 Alfred Page.....		250
65 W. W. Baker.....		250
65 C. J. Smith.....		250
100 R. K. Neill.....		250
141 Joseph H. Neill.....		250
10 Miles C. Moore.....		250
60 Walter & Robt. Moore.....		250
50 Francis Jenkins.....		250
45 Clarence Cunningham.....		250
35 F. Cushing Moore.....		250
41 Hayes & Jones.....		250
138 H. W. Collins.....		250
90 A. B. Campbell.....		250
" A. B. Campbell.....		250
(In lead pencil).....	60,846.02	60,846.02
	60,846.02	60,846.02

PAGE 10.

CATILLA, ALASKA, Nov. 1903.

Brought forward.....	60,846.02	60,846.02
3 Cash %.....	267.45	
151 To supply %.....		267.45
Goods sold to men at camp and deducted from pay roll but Labor % chgd in full.		
Dec.		
3 Sundries to cash.....		1,047.75
171 Labor % P. R. Dec. V. 1.....	619.50	
180 Salary " C. C. " " 2.....	200	
165 Genl. exp. % voucher No. 3.....	17	
151 Supply " " " 4.....	211.25	
3 Cash % dr.....	19.60	
151 To Supply %.....		19.60
Supplies furnished to employees at camp in Dec.		
(In pencil).....	62,180.82	62,180.82
3 Cash % to sundries.....	382.60	
151 Supply " Sept. S. Bros. & Co.....		11.32
" " " Oct. A. B. & Co.....		51.71
" " " C. C. pr. %.....		16.97
" " " Nov.....		167.25
180 Horse & E. % Nov. double chg.....		18.75
171 Labor " " Error.....		116.60
(In lead pencil).....	62,563.42	62,563.42
The above accounts will be found in voucher No. 38.....	62,563.42	62,563.42

PAGE 11.

CATILLA, ALASKA, January, 1904.

Amt brot. ford.....	62,563.42	62,563.42
3 Sundries to cash.....		791.19
171 Labor % P. R. vouch. No.....	534.25	
151 Supply " voucher No.....	50.94	
180 Salary " " ".....	200	
145 Trav. Exp. % " ".....	6.00	
151 Sundries to supply %.....		78.15
180 Horse & eq. % May.....	42.60	
180 " " " Oct.....	35.55	
3 Sundries to cash.....		163.39
151 Sup. % May not chgd.....	34.45	
" " " Aug. P. C. Tdg. Co.....	26.55	
" " " ".....	35.15	
" " " ".....	44.35	
" " " ".....	5.80	
171 Labor % Sept. ".....	17	
The above accounts were not charged as per bills in the files as shown. H. & E. % was not chgd its proper amt freight chgs.		
171 Labor % dr.....	75	
To cash.....		75
Time book for July does not show time for 2 cooks paid 40 & 35 pr. mo. respectively.		
(In lead pencil).....	63,671.06	63,671.06
	63,671.06	63,671.06

PAGE 12.

CATALLA, ALASKA, January 31, 1904.

Amt brot. ford.	\$63,671.06	\$63,671.06
171 Sundries to labor %		10,331.67
175 Trail % (Trout Creek)	360	
175 " " (Clear Creek)	348.72	
177 Bldg " (Trout Creek)	443.50	
177 " " (Warehouse)	300	
186 Survey	611.45	
185 Boat & pkg % (Steamer to camp)	1,100	
191 Prospecting & dev. % (Trout Creek)	4,731.65	
191 " " (Clear Creek)	1,738	
191 " " (Carbon Creek)	668.25	
151 Sundries, to supply		5,102.78
155 Tools & ammunition %	1,303.66	
157 Bdg house eqpmt	478.94	
159 " store %	3,320.18	
159 Sundries To Bdg hs. store %		1,765.38
175 Trail % Trout Creek	140.38	
175 " " Clear Creek	120	
177 Bldg " Trt. Creek	72	
177 " " Wrs. House	53	
186 Survey	110	
185 Pkg. & river	170	
191 Pros & dev. Trt Creek	733	
191 " " Clear	287	
191 " " Carbon	100	
(In lead pencil)	80,870.79	80,870.79
	80,870.79	80,870.79

PAGE 13.

CATALLA, ALASKA, February 29, 1904.

Amounts brought ford.	80,870.79	80,870.79
3 Sundries To cash		831.91
191 Pros. & dev. % voucher No. 42	355.00	
180 Horse & eq.	30	
159 Bdg. h. store	45	
155 Tool & am.	50.94	
165 General expense	4.47	
165 " "	49	
155 Tool & ammunition	12	
189 Salary	200	
165 General expense	45	
169 Bdg. house store	39.85	

In segregating the above accounts prospecting and development % is chgd with the entire pay roll except the amount paid for care of horses (which is chgd to horse & eq. %) and amt paid the cook, which is chgd. to Bdg. House St. %. General expense is charged with many extra items for this month, including stenographer fees \$49.00 expense of getting supplies to camp and expense incurred in getting mail to Kayak where three men were storm bound seven days.

81,702.70 81,702.70

PAGE 14.

CATALLA, ALASKA, March, 1904.

Amt brought forward.	81,702.70	81,702.70
3 Cash, to sundries		6,000
10 Miles C. Moore	250	
15 Mason & Peel	250	
21 J. G. Cunningham	250	
35 F. Cushing Moore	250	
F. C. Davidson		
Michael Doneen		
41 Hayes & Jones	250	
45 Clarence Cunningham	250	
50 Francis Jenkins	250	
55 C. J. Smith	250	
60 Moore Bros	250	
65 W. W. Baker	250	
71 Alfred Page	250	
75 Jones & Stevens	250	
81 John A. Finch	250	
90 A. B. Campbell	250	
100 R. K. Neill	250	
110 I. N. Campbell	250	
115 C. H. Moore	250	
121 F. C. Burbridge	250	
125 H. C. Wick	250	
135 Hugh B. Wick	250	
138 H. W. Collins	250	
141 Joseph H. Neill	250	
90 A B C	250	
90 A B C	250	
H. M. Davenport		

87,702.70 87,702.70

PAGE 15.

CATALLA, ALASKA, March, 1904.

Amount brot. forward.....	\$87,702.70	\$87,702.70
3 Sundries, to cash.....		775.85
165 Genl expense voucher No. 46.....	29.10	
145 Trav. " " ".....	21.75	
159 Bdg house store % " ".....	17.50	
189 Salary % " ".....	200	
191 Prospecting & d. " " 47.....	432.50	
180 Horse & equipmt " " 47.....	30	
159 Bdg. house st. " ".....	45	
90 A. B. Campbell Williams Bldg.....	3,000	
97 To W. H. Warner—Cleveland, O.....		1,500
107 " W. E. Miller, Elyria, ".....		1,500
On March % drafts I was advised the above parties had each taken one interest in the coal lands held by Mr. Campbell.		
	91,478.55	91,478.55

PAGE 16.

CATALLA, ALASKA, April, 1904.

Amounts brot. ford.....	91,478.55	91,478.55
3 Sundries, to cash.....		1,687.71
165 Genl expense % voucher 48.....	8.45	
180 Horse & equipmt " " ".....	1.76	
189 Salary " " ".....	200	
190 Prospecting & dev. " " 49.....	1,432.50	
159 Bdg house store % " ".....	45	

May, 1904.

3 Sundries, to cash.....		2,537.32
184 Boat & mach. %, voucher 50.....	46.02	
" " " " 51.....	604.86	
184 " " " " 52.....	32.50	
" " " " 53.....	83.22	
155 Tool & ammunition %, voucher 53.....	108.90	
189 Salary " " " 54.....	200	
184 Boat & mach. " " ".....	1.20	
165 Genl. exp. " " ".....	35	
180 Horse & equipmt " " ".....	.92	
190 Prosptg & devel " " ".....	1,320	
159 Bdg house store " " ".....	45	
	95,703.58	95,703.58

PAGE 17.

CATALLA, ALASKA, June, 1904.

Amt brot ford.....	95,703.58	95,703.58
3 Sundries, to cash.....		1,485.36
165 Genl expense, voucher No. 58.....	21	
180 Horse & eqmt. " " 59.....	18.31	
159 Bdg house st. %, voucher No. 60.....	35.45	
" " " " " 61.....	324.05	
" " " " " 62.....	50.00	
" " " " " 63.....	3.00	
165 Genl expense " " " 63.....	19.65	
189 Salary " " " ".....	200	
Prosp. & devel " " " 64.....	xx	
Tool & am. " " " ".....	xx	
186 Survey " " " 65.....	333	
175 Trall " " " ".....	88.80	
191 Prospectg & devel " " " ".....	381.50	
(In lead pencil)		
	1,485.36	
3 Cash dr.....	51.25	
159 Bdg house st. %.....		51.25
Mdse sold to employes from bdg. house.		
	97,240.19	97,240.19

PAGE 18.

CATALLA, ALASKA, July, 1904.

Brot ford			\$97,240.19	\$97,240.19
3 Sundries, to cash				1,673.55
159 Bdg. h. store % voucher No. 66			47.10	
180 Horse & eq			90.40	
184 Boat & mach.			8.35	
155 Tool & am.			152.80	
186 Survey			455	
190 Prosp. & dev.			350.50	
185 River & pkg.			161	
175 Trall			54	
159 Bdg. house st.			22.90	
155 Tool & am.			7.00	
165 Genl. exp.			27.55	
159 Bdg. house st.			11.50	
184 Boat & mach.			15.50	
189 Salary			200	
155 Tool & supply			4.50	
165 Genl. expense			33	
184 Boat & mach.			5.05	
159 Bdg. house st.			30.40	
		(In lead pencil)	1,673.55	
3 Cash			22.95	
159 To Bdg. house st. %		(In lead pencil)	98,936.69	98,936.69
Mdse sold to employes from boarding house			98,936.69	98,936.69

PAGE 19.

CATALLA, ALASKA, Aug. 1904.

Amt brot forward			98,936.69	98,936.69
3 Sundries, to cash				1,855.70
191 Developing & pros. % vou. 75			1,287.00	
185 River packing			167.50	
186 Survey			121.75	
159 Bdg. house store			50	
189 Salary			200	
165 General expense			15.90	
159 Bdg. house store			13.55	
3 Cash dr. to sundries			98.25	
185 River & packing % vou. 77				10
186 Survey				15.40
159 Bdg. house store				72.85
		(In lead pencil)	99,890.64	99,890.64
Sums received for supplies, cook hire, and packing outfit from S. C. Cheymn and other employes as per voucher			99,890.64	99,890.64

PAGE 20.

CATALLA, ALASKA, Sept. 1st, 1904.

Amt brot ford			99,890.64	99,890.64
3 Cash, to sundries				2,800
10 Miles C. Moore	dft.		100	
15 Mason & Peel	"		100	
21 J. G. Cunningham	"		100	
35 F. Cushing Moore	dft.		100	
27 F. C. Davidson	"		100	
31 M. Doneen	"		100	
41 Hayes & Jones	"		100	
50 Francis Jenkins	"		100	
55 C. J. Smith	"		100	
60 Moore Bros.	"		100	
65 W. W. Baker	"		100	
71 Alf Page	"		100	
75 Jones & Stevens	"		100	
80 John A. Finch	"		100	
190 R. K. Neill	"		100	
121 F. C. Burbridge	"		100	
125 H. C. Wick	"		100	
135 H. B. Wick	"		100	
138 H. W. Collins	"		100	
141 J. H. Neill	"		100	
90 A. B. Campbell	"		100	
115 C. H. Moore	"	A. B. C.	100	
110 I. N. Campbell	"	"	100	
93 Henry White	"	"	100	
95 B. C. Riblett	"	"	100	
97 H. W. Warner	"	"	100	
107 W. E. Miller	"	"	100	
45 Clarence Cunningham	"	"	100	

(In lead pencil) 102,690.64 102,690.64

PAGE 21.

CATALLA, ALASKA, Sept. 30' 1904.

Amount brot ford.		\$102,690.64	\$102,690.64
3 Sundries, to cash.			2,303.33
155 Tool & amtn % voucher 79		57.00	
159 Bdg house store	80	132.54	
" " "	81	50	
185 River & pkg	"	21.25	
186 Survey	"	20	
191 Prosp. & dev.	"	330	
186 Survey	82	438.45	
" " "	83	120	
159 Bdg house st.	84	28.70	
" " "	85	187.00	
181 Horse & equip. % voucher 86		173.97	
185 Genl. expense	87	286.73	
185 Boat & mach.	"	8.55	
145 Trav. exp.	"	90	
189 Salary	"	200	
165 Genl. expense	88	20	
145 Trav.	"	36.55	
159 Bdg. house store	"	108.99	
3 Cash %		4.00	
159 To bdg. house %			4.00
(In lead pencil)		104,997.97	104,997.97
		104,997.97	104,997.97

PAGE 22.

CATALLA, ALASKA, Oct., 1904.

Amount forward.		104,997.97	104,997.97
3 Cash dr. to sundries		350.00	
105 Chas. Sweeney			350
Mr. Sweeney succeeds H. M. Davenport paying, the unpaid assessments and having his name substituted, Davenport having sums pd. by him returned without entering same.			
3 Cash dr.		2,100	
27 Fred C. Davidson			250
31 Michael Doneen			250
33 H. C. Henry, Seattle.			1,600
(In lead pencil)		107,447.97	107,447.97
Mr. Henry, prest. of Natl. Bank of Commerce, Seattle, takes one interest in the coal fields.			
Sundries dr. to cash			
		107,447.97	107,447.97

PAGE 23.

CATALLA, ALASKA, Jan., 1905.

Amounts brot. ford.		107,447.97	107,447.97
3 Cash dr. to sundries.		4,000	
39 F. F. Johnson, Wallace, Ida.			1,600
43 A. L. Scofield, Los Angeles.			1,600
53 Ignatius Muller, Juneau, Alaska.			800
Each of the above persons subscribed for one interest; the last named paid but 1/2 the amount due for his, but will pay balance at any time.			
110 Chas. Hussey, dr.		1,500	
93 To Henry White.			1,500
Mr. White gets one interest that was carried by Mr. A. B. Campbell through (?) Mr. Hussey.			
115 C. H. Moore, dr.		1,500	
95 B. C. Riblett.			1,500
Claim carried by Mr. Moore was really by Mr. Campbell and transferred to Mr. Riblett.			
(In lead pencil.)			114
		114,447.97	114,447.97

PAGE 24.

CATALLA, ALASKA, Feb. 28, 1905.

Amounts brot. ford.		114,447.97	114,447.97
3 Sundries to cash.			4,614
191 Prospectg. & dev. % vouch. 89		830.50	
186 Engineer & survey	90	350.85	
191 Prospectg. & dev. %	"	9.50	
" " "	91	443	
185 River & packing	"	126	
" " "	92	59.50	
195 Prospectg. & dev. %	92	434.00	
193 " "	93	461.50	
151 Bdg. house store	94	99.67	
110 I. N. Campbell	95	100	
115 C. H. Moore % vouch.		100	
145 Trav. exp.	"	130	
180 Horse & eqpm.	"	150.75	
105 Genl. expense	"	103	
159 Bdg. house store	"	147.73	
183 River & packg.	"	98	
189 Salary	"	1,000	
(In lead pencil.)		4,614	
(In lead pencil.)		119,061.97	119,061.97
		119,061.97	119,061.97

PAGE 25.

CATALLA, ALASKA, March, 1905.

Amounts brot. ford.....	\$119,061.97	\$119,061.97
3 Cash dr. to sundries.....		3,200
73 N. B. Nelson, Seattle.....	1,600	
79 Frank A. Moore.....	1,600	
3 Sundries to cash.....		1,269.75
159 Bdg. house store % voucher 96.....	166.00	
165 Genl. expense " ".....	32	
181 Survey & engineer " ".....	150	
189 Salary " ".....	200	
191 Prospectg. & dev. " ".....	721.15	
(In lead pencil.)		
123,531.72	123,531.72	
Having 35 coal claims in our land, we sold one claim to each of the above parties, thus making 33 paid subscriptions.		
On engineering % I advanced sum shown (150) to Mr. Hubbell on % work.		
	123,531.72	123,531.72

PAGE 26

CATALLA, ALASKA, April, 1905.

Brot forward.....	123,531.72	123,531.72
Cash % sundries (pencil)—		
3 To.....		3,000
10 Miles C. Moore.....	100	
15 Mason & Peol.....	100	
21 J. G. Cunningham.....	100	
25 F. Cushing Moore.....	100	
27 F. C. Davidson.....	100	
31 M. Donean.....	100	
41 Hayes & Jones.....	100	
Francis Jenkins.....	100	
55 C. J. Smith.....	100	
60 Walter Moore.....	100	
65 W. W. Baker.....	100	
71 Alfred Page.....	100	
75 Jones & Stevens.....	100	
80 John A. Finch.....	100	
R. K. Neill.....	100	
121 Fredk. Burbridge.....	100	
125 Henry Wick.....	100	
135 Hugh B. Wick.....	100	
138 H. W. Collins.....	100	
Joseph H. Neill.....	100	
90 A. B. Campbell.....	100	
93 Henry White.....	100	
95 B. C. Riblett.....	100	
97 H. W. Warner.....	100	
107 W. E. Miller.....	100	
45 Clarence Cunningham.....	100	
105 Charles Sweeney.....	100	
33 Horace C. Henry.....	100	
39 F. F. Johnson.....	100	
43 A. L. Schofield.....	100	
53 Ignatius Muller.....	100	
79 Frank B. Moore.....	100	
78 N. B. Nelson.....	100	

PAGE 27.

CATALLA, ALASKA, April, 1905.

Brought ford.....	126,531.72	126,531.72
Sundries, cash (pencil)—		
3 Dr. to.....		1,295.05
191 Pros. & develmt % voucher 97.....	337.55	
181 Survey & Eng. " ".....	500	
165 Genl. expense " ".....	119	
159 Bdg. house store " ".....	138.50	
189 Salary " ".....	200	
On April 29th sent by purser of S. S. Santa Anna \$500 to Kayak for use in paying bills and labor % on survey.		
Same date sent Judge Britter, U. S. Com. at Catalla, \$119.00, to pay for recording coal claims.		
Boarding-house account is for grocery bill sent from Schwabacher Bros. & Co.		
Made drafts on each of the subscribers to our coal lands venture for \$100, which sums have been credited as paid.		
Engineering crew under Mr. Hubbell returned to Kayak April 9th to complete survey of coal lands. Left account with Wm. Carless to collect for Coal Co. \$500 at Catalla. Also advanced to Idaho Oil Co. \$564.35 (pencil) on account current expenses.		
	127,826.77	127,826.77

PAGE 28.

CATALLA, ALASKA, May, 1905.

Amount brot forward.....	\$127,826.77	\$127,826.77
159 Sundries Dr. to bdg house S. %.....		2,000
175 Trail %.....	800	
186 Survey & eng. %.....	800	
191 Pros. & developmt %.....	1,000	
Supplies charged to bdg. house store % and used by the various acct.		
charged as above during the year 1904		
Amts. due by each % was arrived at after inventory of stock on hand		
and prorated as above		
180 Sundries to horse & eq. %.....		925.42
175 Trail %.....	442.32	
186 Survey & eng. %.....	184.10	
191 Pros. & developmt %.....	300	
The above sums were earned by the horses in packing supplies to the		
various camps and charged without profit to the horse & equipment %.		
	130,753.19	130,753.19

PAGE 29.

CATALLA, ALASKA, May, 1905.

Amount brot forward.....	130,753.19	130,753.19
3 Sundries to cash.....		1,219.95
191 Pros. & developmt % vouch. 98.....	173.85	
186 Survey & engineer " " ".....	642.35	
185 River & packing " " ".....	145.65	
184 Boat & machinery " " ".....	12	
165 General expense " " 99.....	12.35	
145 Travelling " " ".....	33.75	
189 Salary " " ".....	200	
Engineer & survey % Includes work done by Hubbell surveying land for		
patent which was begun in April and continued through this month,		
but delayed some on % of bad weather.		
	131,973.14	131,973.14

PAGE 30.

CATALLA, ALASKA, June, 1905.

Amounts brot forward.....	131,973.19	131,973.19
3 Sundries Dr. to cash.....		1,071
196 Survey & engineer % vouch. 100.....	550.15	
191 Prospecting & d. " " ".....	187	
165 General expense " " 101.....	9	
145 Travel " " ".....	15	
159 Bdg house store % voucher 101.....	109.85	
189 Salary " " ".....	200	
Survey work in the field was completed June 25. Above charge was for		
men employed by engineer.		
	133,044.19	133,044.19

PAGE 31.

CATALLA, ALASKA, July, 1905.

Amounts brot forward.....	133,044.19	133,044.19
3 Sundries Dr. to cash.....		1,819.15
186 Survey & engineer % v. 102.....	935.35	
31 Pros. & dev. % " 103.....	422.60	
159 Bdg house store " " 104.....	50.35	
145 Trav. expense " " ".....	99.50	
165 Genl. " " ".....	65.85	
189 Salary " " 105.....	200	
184 Boat & machy " " ".....	9.25	
165 Genl expense " " ".....	2.50	
159 Bdg house store " " ".....	33.85	
186 Survey & engineer %.....	514.00	
159 To bdg house store %.....		514
Cost of boarding men while employed on survey.		
General and traveling exp. accounts include cost of bringing Mr. Haw-		
kins into the field to examine the property.		
3 Cash % Dr. v. 106.....	111.95	
159 Bdg house store %.....		111.95
Mdee sold from stock to Aug. 1st, 1905.		
	135,489.29	135,489.29

PAGE 32.

CATALLA, ALASKA, July, 1906.

Amounts brot ford.....	\$135,489.29	\$135,489.29
8 Cash % to sundries.....		2,800
10 Miles C. Moore.....	100	
15 Mason & Peel.....	100	
21 J. O. Cunningham.....	100	
27 F. C. Davidson.....	100	
31 Michael Doneen.....	100	
F. Cushing Moore.....		
41 Hayes & Jones.....	100	
45 Clarence Cunningham.....	100	
Francis Jenkins.....		
55 C. J. Smith.....	100	
60 Walter Moore.....	100	
65 W. W. Baker.....	100	
83 Horace C. Henry.....	100	
43 A. L. Scofield.....	100	
F. F. Johnson (fig. "1" scratched).....	00	
71 Alfred Page.....	100	
75 Jones & Stevens.....	100	
78 N. B. Nelson.....	100	
79 Frank A. Moore.....	100	
80 John A. Finch.....	100	
107 W. E. Miller.....	100	
90 A. B. Campbell.....	100	
J. H. Neill (fig. "1" scratched).....	00	
93 Henry White.....	100	
138 H. W. Collins.....	100	
95 B. C. Riblett.....	100	
121 Fredk. Burbridge.....	100	
97 W. H. Warner.....	100	
125 Henry Wick.....	100	
R. K. Neill.....		
135 Hugh B. Wick.....	100	
105 Chas. Sweeney.....	100	
53 Ignatius Muller.....	100	

PAGE 33.

CATALLA, ALASKA, August, 1906.

Amounts forward.....	138,289.29	138,289.29
8 Cash % Dr.....	500	
53 To Ignatius Muller.....		500
8 Sundries, to cash.....		814.40
189 Salary %, voucher No. 107.....	200	
159 Bdg. house S. " " ".....	20.85	
165 General exp. " " ".....	110.50	
191 Pros. & dev. " " 108.....	484.25	

In the above accounts that of genl. exp. consisted largely of costs attached to making examination of coal lands by Mr. H. L. Hawkins including amount paid U. S. Geological surveyor for map which he made after working hours for me.

The Pros. & dev. % consisted of work done entirely for the purpose of making examination.

139,604.69 139,604.69

PAGE 34.

CATALLA, ALASKA, September, 1906.

Amts brought forward.....	139,604.69	139,604.69
8 Sundries, to cash.....		701.47
159 Bdg. house st. % Vouch. 109.....	50.92	
180 Horse & eq. " " ".....	50	
189 Salary " " ".....	200	
165 General exp. " " ".....	88.05	
191 Pros. & dev. " " 110.....	312.50	
(In lead pencil).....	701.47	

Bdg. House % consists of Steamer frt. chgs. advanced by Gray together with supplies bought at Catalla.

Horse & Equipment % is for expense taking horses and feed from Strawberry to Chilcat Lake.

General Expense and prosp. & dev. % were incurred in making examination of coal lands by Hawkins.

(In lead pencil) 140,306.16 140,306.16
140,306.16 140,306.16

PAGE 35.

CATALLA, ALASKA, October, 1905.

Amts brought forward.....		\$140,306.16	\$140,306.16
3 Cash % to sundries.....			0,780
10 Miles C. Moore.....		200	
15 Mason & Peel.....		200	
21 J. G. Cunningham.....		200	
27 F. C. Davidson.....		200	
31 M. Doneen 11/27 (pencil).....		200	
33 H. C. Henry.....		200	
35 F. Cushing Moore.....		100	
39 F. F. Johnson.....		100	
41 Hayes & Jones.....		200	
43 A. L. Scofield.....		200	
45 Clarence Cunningham.....		200	
50 Francis Jenkins.....		150	
53 Ignatius Mullen.....		200	
55 C. J. Smith.....		200	
59 W. B. Moore.....		200	
55 W. W. Baker.....		200	
71 Alfred Page.....		200	
75 Jones & Stevens.....		200	
78 N. B. Nelson 10.23 (pencil).....		200	
79 Frank A. Moore.....		200	
80 John A. Finch.....		200	
90 A. B. Campbell.....		200	
93 Henry White.....		200	
95 B. C. Riblett.....		200	
97 W. H. Warner.....		200	
100 R. K. Neill.....		400	
105 Chas. Sweeney.....		200	
107 W. E. Miller.....		200	
121 Fredk. Burbridge.....		200	
125 Henry Wick.....		200	
133 H. W. Collins.....		200	
141 Joseph H. Neill.....		400	
135 Hugh B. Wick.....		200	

PAGE 36.

CATALLA, ALASKA, October, 1905.

Amts brought forward.....		147,056.16	147,056.16
3 Sundries to cash.....			3,436.13
186 Engineer survey % voucher 111.....		257.00	
145 Trnv. expenses " " 112.....		103.25	
105 Genl. " " " ".....		41.80	
172 Patent " " " ".....		130	
159 Bdg House store " " " ".....		81.55	
189 Salary " " " ".....		200	
177 Bldg & impvt " " " ".....		47.05	
180 Horse eqmt " " " ".....		43.50	
105 Genl. expense " " 113.....		1,167	
159 Bdg. house store " " 114.....		35.85	
155 Tool & amtn " " 115.....		250.55	
180 Horse & eqpmt " " 110.....		61.75	
159 Bdg. House store " " 117.....		350.80	
" " " " " " 118.....		48.10	
157 " " eqpmt " " 119.....		21.33	
177 Bldg. impvt " " 120.....		640	
4 Cash % dr.....		640	
177 Bldg. & impvemt %.....			640
The above account was entered as voucher 120 but was not corrected until time book was brought from Kayak.			
177 Bldg. & impvemt % No. 120.....		099.75	
4 To cash.....			009.75
		(In lead pencil)	
Correction made so not to alter entry or ledger.....		151,832.04	151,832.04
		151,832.04	

PAGE 37.

CATALLA, ALASKA, November, 1906.

Amts brought forward.....	\$151,832.04	\$151,832.04
4 Sundries to cash.....		1,772.96
186 Eng. & survey %, voucher No. 121.....	737.85	
177 Bldg. & imp " " 122.....	833	
" " " " 123.....	18.50	
165 Expense " " ".....	48.00	
155 Tools & am. " " ".....	50.00	
159 Bdg. house st. " " ".....	50.00	
180 Horse & eq. " " ".....	35	
(In lead pencil)	1,772.96	

In the above entries the engineer & survey % was for balance due C. S. Hubbell who, on completing surveys and filing plats went to Seward, Alaska, and did not render bill for services until this date. Previous charges were for sums paid on that % from time to time as per vouchers 122. 3 were for labor performed in building new camp on Clear Creek and material purchased for same. Expense % was for sums incurred by Cheamin during the months of October & Nov. in keeping men and paying their expenses on river to & from camp.

(In lead pencil) 153,604.99 153,604.99
153,604.99 153,604.99

PAGE 38.

CATALLA, ALASKA, Dec., 1906.

Amounts forward.....	153,604.99	153,604.99
4 Sunds. dr. to cash.....		539.80
165 Expense %, voucher 124.....	12	
185 River & Pkg " " ".....	127.50	
175 Trall " " ".....	93	
177 Bdg & imp " " ".....	118.65	
165 Expense " " 125.....	49.80	
167 Legal " " ".....	100	
172 Patent " " ".....	37.95	

The above accounts were apportioned from the pay roll by charging each % in voucher 124 with the number of days spent thereon.

In No. 125 we charged to expense % \$15.00 overpaid to one man by mistake of foreman.

Legal expense % is a new one just opened and patent expense is for sums paid at the Surveyor Genl's office as per voucher.

(In lead pencil) 154,141.89 154,141.89
154,141.89 154,141.89

PAGE 39.

CATALLA, ALASKA, Jan., 1906.

Amts brot. forward.....	154,141.89	154,141.89
4 Sundries to cash.....		54.80
166 Expense %, voucher 126.....	54.80	

Having no commcnin during this month have carried the expenses incurred at Kayak into next month's account.

Feb., 1906.

4 Sundries dr. to cash.....		1,161.10
172 Patent %, voucher 127.....	73.50	
166 Xpense " " ".....	378.50	
166 " " " 128.....	6.10	
145 Trav. Ex. " " ".....	50.00	
194 Harbor " " ".....	250	
172 Patent Exp. " " ".....	330	
180 Horse & Eqpt. " " 129.....	52.50	
166 Expense " " ".....	20.50	

(In lead pencil) 155,357.49 155,357.49
155,357.49 155,357.49

PAGE 40.

CATILLA, ALASKA, Feb., 1906.

Amounts brot. ford.....		\$455,357.49	\$155,357.49
4 Cash % to sundries.....			3,500
10 Miles C. Moore.....	1/22.....	100	
15 Mason & Peel.....	1/29.....	100	
21 J. G. Cunningham.....	2/3.....	100	
27 F. C. Davidson.....	2/8.....	100	
31 Michael Doneen.....	1/29.....	100	
33 Horace C. Henry.....	2/1.....	100	
35 F. C. Moore (Oct. Dft).....	2/9 200 6/4 100.....	300	
39 F. F. Johnson ".....	200 3/14-100.....	300	
41 Hayes & Jones.....	2/6.....	100	
43 A. L. Scofield.....	2/2.....	100	
45 Clarence Cunningham.....	1/22.....	100	
53 Ign. Mullen.....	2/8.....	100	
55 C. J. Smith.....	1/22.....	100	
60 W. R. Moore.....	1/22.....	100	
65 W. W. Baker.....	2/1.....	100	
71 Alf. Page.....	2/19.....	100	
75 Jones & Stevens.....	2/5.....	100	
78 N. B. Nelson.....	1/22.....	100	
79 F. A. Moore.....	".....	100	
80 John A. Finch.....	1/29.....	100	
90 A. B. Campbell.....	1/29.....	100	
93 Henry White.....	2/1.....	100	
97 W. H. Warner.....	3/7.....	100	
B. C. Riblett.....			
100 R. K. Neill.....	3/3.....	100	
105 Chas. Sweeney.....	1/29.....	100	
107 W. E. Miller.....	2/5.....	100	
121 Fredk Burbridge.....	2/1.....	100	
125 Henry Wick.....	2/3.....	100	
138 H. W. Collins.....	1/31.....	100	
141 Jos. H. Neill.....	3/3.....	100	
135 Hugh B. Wick.....	2/6.....	100	
Francis Jenkins.....			

(In lead pencil) 158,857.49 158,857.49

PAGE 41.

CATILLA, ALASKA, May 31st, 1906.

Amounts brought forward.....		158,857.49	158,857.49
4 Sundries dr. to cash.....			652.20
194 Harbor & dock %, voucher 130.....		53.40	
186 Survey & eng. " " ".....		12.30	
172 Patent exp. " " ".....		9.00	
166 Genl. " " ".....		104.50	
194 Harbor & dock " " 131.....		9.00	
194 " " " 132.....		494.00	

Left Wallace June 1st for Seattle, intending to catch steamer June 10th, but they missed connections, so was delayed until June 26th. In explanation of above accounts, as vouchers will show, the Harbor and Dk was expenses incurred by sending Engineer Jamsee (?) to examine and report on same while survey.

% was a balance claimed by Mr. Hubbell to be due him for work.

The preceding page shows drafts made on each of the claim owners for \$100. On Jan. 22nd, 1906, while dates following show when same were paid.

(In lead pencil) 150,539.69 150,539.69

PAGE 42.

CATALLA, ALASKA, June 1st, 1906.

Amount brot forward.....		\$150,539.60	\$159,539.60
4 Cash to sundries.....		3,209	
10 Miles C. Moore.....	6/29		100
15 Mason & Peel.....	7/2		100
21 J. G. Cunningham.....	"		100
27 F. C. Davidson.....	7/7		100
31 Michael Doneen.....	7/2		100
33 Horace C. Henry.....	6/27		100
35 E. Cushing Moore.....	8/13		100
39 F. F. Johnson.....	9/20		100
41 Hayes & Jones.....	8/13		100
43 A. L. Scofield.....	8/16		100
45 Clarence Cunningham.....	6/30		100
53 Ignatius Mullen.....	7/16		100
55 C. J. Smith.....	6/27		100
60 W. B. Moore.....	6/29		100
65 W. W. Baker.....	"		100
71 Alfred Page.....	7/13		100
75 Jones & Stevens.....	6/30		100
78 N. B. Nelson.....	9/20		100
79 F. A. Moore.....	6/27		100
80 John A. Finch.....	6/30		100
90 A. B. Campbell.....	6/30		100
93 Henry White.....	9/20		100
96 B. C. Riblett.....	7/13		100
W. H. Warner.....			
100 R. K. Neill.....	7/13		100
105 Chas. Sweeney.....	6/30		100
107 Wm. E. Miller.....	7/16		100
121 Fredk Burbridge.....	7/13		100
125 Henry Wick.....	7/14		100
138 H. W. Collins.....	7/7		100
141 Joseph H. Neill.....	7/13		100
135 Hugh B. Wick.....	7/17		100
50 Francis Jenkins.....	8/1		100

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CATALLA, ALASKA, Nov. 1st, 1906.

Amounts brot. forward.....		162,739.60	162,739.60
4 Sundries to cash.....			3,250.94
160 Bdg. house sup. %, voucher 133.....		96.07	
160 " " " " 134.....		43.08	
160 " " " " 135.....		228.40	
160 " " " " 136.....		82.00	
145 Trav. exp. " " " ".....		319	
166 Genl. " " " ".....		299	
172 Patent " " " ".....		176.25	
167 Legal " " " ".....		260	
194 R. R. & harbor " " " ".....		36.65	
190 Horse & eqmt. " " " ".....		10	
" " " " " " 137.....		303.24	
189 Salary " " " ".....		1,000	
172 Patent exp. " " " ".....		456.25	

(In lead pencil)

165,999.63 165,999.63

The above accounts have been carried along since the last entry in May, due to the fact it was not convenient while the accounts were not large, as but little work has been carried on awaiting issuance of patent. The bdg. house account included all supplies purchased since Nov. '05, and those bot. to carry the crew through the winter. Traveling and genl exp. was heavy, on % of various experts sent to examine the coal.

PAGE 44.

CATALLA, ALASKA, Nov., 1906.

Amts. brot. forward.....		165,999.63	165,999.63
Following the explanation of the foregoing accounts, the patent exp. % is for sums paid for publishing notices making affidavits of postz. and affidavits from Hawkins (?), showing character of land, as required by land office legal expense %, was the sum paid J. W. Dudley—per agreement—for getting up publication notices, affidavits, etc., and was very cheap, considering the amount of work done for each claim. R. R. & harbor % is for expense incurred in examining route: survey expenses will follow.			
Horse & eq. % is for feed for the coming winter. It will be noticed there is no pay roll charged Nov., 1906. This is due to the fact our men have remained steadily with us and allowed their time to accumulate, while I kept memoranda of sums drawn by them.			

165,999.63 165,999.63

106 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

PAGE 45.

CATALLA, ALASKA, Dec., 1906.

Amts. brought forward.....	\$165,999.63	\$165,999.63
4 Sundries, to cash.....		2,484.55
194 R. R. & harbor % , voucher No. 140.....	960.05	
177 Bldg. & imp. " " 141.....	100	
175 Road & trail " " ".....	378.45	
185 River & packg. " " ".....	345.80	
159 Bdg. hs. sup. " " ".....	40.60	
145 Trav. expense " " ".....	150.20	
165 Genl. " " ".....	48.85	
167 Local " " ".....	60	
189 Salary " " ".....	400	
(In lead pencil)	168,484.18	168,484.18

Voucher 140 is for sums paid on account of survey for railroad from Clear Creek to] point opposite Kanack Island.

Bldg. & imp. % work on stable & road from camp to warehouse (one man still unpaid).

River & pkg. is cost of getting supplies and feed from S. S. up river to warehouse. %

Bdg. house supplies is for meats not in stock when supplies as per voucher 128] were ordered, but shipped later.

Trav. exp. % was for expense incurred to and from Juneau % tendering payment for claims. Other items, see voucher 141.

168,484.18 168,484.18

PAGE 46.

CATALLA, ALASKA, Dec., 1906.

Amts. brought forward.....	168,484.18	168,484.18
194 R. R. & harbor %.....	26.50	
159 To bldg. house sup. %.....		26.50
Tent and stove purchased for railroad survey party and charged to bldg. hs. sup. %.....		
(In lead pencil)	168,510.68	168,510.68
	168,510.68	168,510.68

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CATALLA, ALASKA, Dec., 1906.

Amounts brought forward.....	168,510.68	168,510.68
4 Cash, to sundries.....	3,000	
10 Miles C. Moore, 12/17.....		100
15 F. H. Mason, 1/12.....		100
21 J. G. Cunningham, 1/12.....		100
27 F. C. Davidson, 12/21.....		100
31 Michael Doneen, 1/22.....		100
33 H. C. Henry, 12/17.....		100
35 F. Cushing Moore, 1/12.....		100
39 F. F. Johnson, 1/22.....		100
41 Orville D. Jones, 1/22.....		100
A. L. Scofield.....		
45 Clarence Cunningham, 12/17.....		100
Ignatius Mullen.....		
55 C. J. Smith, 1/26.....		100
60 W. B. Moore, 12/17.....		100
65 W. W. Baker, 12/17.....		100
71 Alfred Page, 12/21.....		100
75 Arthur D. Jones, 1/14.....		100
78 N. B. Nelson, 12/19.....		100
79 F. A. Moore, 12/17.....		100
80 John A. Finch, 1/12.....		100
90 A. B. Campbell, 1/12.....		100
93 Henry White, 1/12.....		100
100 R. K. Neill, 12/31.....		100
105 Chas. Sweeney, 12/22.....		100
107 Wm. E. Miller, 1/17.....		100
121 Fredk. Burbridge, 12/27.....		100
125 Henry Wick, 12/28.....		100
138 H. W. Collins, 12/21.....		100
141 Jos. H. Neill, 12/31.....		100
135 Hugh B. Wick, 12/28.....		100
50 Francis Jenkins, 12/21.....		100
95 B. C. Riblett, 2/19.....		100
(In lead pencil)	171,510.68	171,510.68
	171,510.68	171,510.68

PAGE 48.

CATALLA, ALASKA, Feb., 1907.

Amounts brought forward.....	\$171,510.68	\$171,510.68
4 Sundries, to cash.....		1,686.25
145 Trav. expense %, voucher 142.....	198.55	
194 R. R. & harbor " ".....	31.95	
186 Engineer & survey " ".....	1,000	
180 Salary " ".....	400	
165 General exp. " ".....	55.75	

In the first item above are two trips to Seattle, first to attend a meeting and select officers for our Behring River Ry. Co. and discuss affidavit question; the second was on account of going north to secure timber and water rights, but owing to washouts, was unable to get thro in time, so sent Hubbell and Chesium instead. R. R. & harbor % is for filing fees sent (?) Sec. of State and rent paid by Hubbell for use of level. Eng. & survey % is the sum I advanced Chesium for expenses on said work. Salary for two months and genl. expense includes all telegrams, cable messages, and stenographer fees for Jan. and Feb., 1907.

PAGE 49.

CATALLA, ALASKA, Mar., 1907.

Amounts brought forward.....	173,196.93	173,196.93
5 Cash %.....	100	
43 A. L. Scofield.....		100

PAGE 50.

CATALLA, ALASKA, Aug., 1907.

Brot. forward.....	173,296.93	173,296.93
4 Cash %.....	3,200	
10 Miles C. Moore, Apr.....		100
15 Fred H. Mason, Apr.....		100
27 F. C. Davidson, Apr.....		100
21 J. G. Cunningham, Apr.....		100
31 Michael Doneen, Apr.....		100
23 Horace C. Henry, Apr.....		100
35 F. Cushing Moore, Apr.....		100
29 F. T. Johnson, Apr.....		100
41 O. D. Jones, Apr.....		100
43 A. L. Scofield, Apr.....		100
45 Clarence Cunningham, Apr.....		100
50 Francis Jenkins, Apr.....		100
Ignatius Mullen, Apr.....		100
60 Walter B. Moore, Apr.....		100
55 C. J. Smith, Apr.....		100
65 W. W. Baker, Apr.....		100
71 Alfred Page, Apr.....		100
75 Arthur D. Jones, Apr.....		100
78 Nelson B. Nelson, Apr.....		100
79 F. A. Moore, Apr.....		100
80 John A. Finch, Apr.....		100
90 A. B. Campbell, Apr.....		100
93 Henry White, Apr.....		100
95 B. C. Riblett, Apr.....		100
97 W. H. Warner, Apr.....		100
100 R. K. Neill, Apr.....		100
105 Chas. Sweeney, Apr.....		100
107 Wm. E. Miller, Apr.....		100
121 Fredk. Burbridge, Apr.....		100
125 Henry Wick, Apr.....		100
135 Hugh B. Wick, Apr.....		100
138 Henry W. Collins, Apr.....		100
141 Joseph H. Neill, Apr.....		100

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CATALLA, ALASKA, Aug., 1907.

Brot. forward.....	176,496.93	176,496.93
4 Sundries, to cash.....		4,122.90
166 Genl. exp. %, vouch. No. 143.....	473.50	
180 Salary " " 144.....	1,000	
195 Timber land " " ".....	2,649.40	
Engineer & Survey %.....		
195 Timber land %.....	1,000	
186 To eng. & survey %.....		1,000

The above accounts include sums paid out since March 1st, all being itemized in vouchers: the last item is charged under date of Feb., '07, and voucher 142 should be transferred to this new %.

181,619.83 181,619.83

PAGE 52.

CATALLA, ALABAMA, Aug., 1907.

Amounts for	\$181,619.83	\$181,619.83
4 Cash to sundries	3,000	
10 Miles C. Moore		100
15 Fred H. Mason		100
27 F. C. Davidson		100
J. G. Cunningham		100
31 Michael Doneen		100
33 Horace C. Henry		100
35 F. Cushing Moore		100
39 F. F. Johnson		100
41 O. D. Jones		100
43 A. L. Scofield		100
45 Clarence Cunningham		100
Francis Jenkins		100
55 C. J. Smith		100
60 Walter B. Moore		100
65 W. W. Baker		100
71 Alfred Page		100
78 N. B. Nelson		100
79 Frank A. Moore		100
80 John A. Finch		100
90 A. B. Campbell		100
93 Henry White		100
95 B. C. Riblet		100
97 W. H. Warner, 8/5		100
100 R. K. Neill, 8/24		100
105 Chas. Sweeney, 8/8		100
107 Wm. E. Miller, 8/17		100
121 Fredk Burridge, 8/17		100
125 Henry Wick, 9/25		100
135 Hugh B. Wick		100
138 Henry W. Collins		100
141 Joseph H. Neill		100
175 Arthur D. Jones		100
Ignatius Mullen		100

PAGE 53.

161 Coal land pur. % to sunds	52,800	
10 Miles C. Moore		1,600
15 Fred H. Mason		1,600
21 John G. Cunningham		1,600
27 Fred C. Davidson		1,600
31 Michael Doneen		1,600
33 Horace C. Henry		1,600
35 F. Cushing Moore		1,600
39 F. F. Johnson		1,600
41 O. D. Jones		1,600
43 A. L. Scofield		1,600
45 Clarence Cunningham		1,600
50 Francis Jenkins		1,600
55 C. J. Smith		1,600
60 Walter B. Moore		1,600
65 W. W. Baker		1,600
71 Alfred Page		1,600
79 N. B. Nelson		1,600
78 Frank A. Moore		1,600
80 John A. Finch		1,600
90 A. B. Campbell		1,600
93 Henry White		1,600
95 B. C. Riblet		1,600
97 W. H. Warner		1,600
100 R. K. Neill		1,600
105 Chas. Sweeney		1,600
107 Wm. E. Miller		1,600
121 Fredk Burridge		1,600
125 Henry Wick		1,600
135 Hugh B. Wick		1,600
138 Henry W. Collins		1,600
141 Joseph H. Neill		1,600
75 Arthur D. Jones		1,600
53 Ignatius Mullen		1,600

PAGE 54.

CATILLA, ALASKA, Aug., 1907.

Amts brot forward.		
74 Sundries dr. to cash.		
195 Timber land %, Vchr No. 145.		\$305.70
186 Expense " " 146.		61.70
180 Bdg house store " " 146.		115
146 Trav'g expense " " 146.		65
185 Furniture & fixtures a/o " " 146.		95.05
181 Horse & eqmt " " 146.		557.40
189 Salary " " 146.		400
185 Genl expense 147.		221.50
180 Bdg house store " " 147.		482.41
186 General expense 148.		204.70
180 Bdg house store 149.		41

99,549.42

In the above vouchers Nos. 146 to 149 include expens incurred by engineers making examination for the Guggenheims, which should be repaid to us. I have made bill for the full amount paid on this account, and on receipt of payment of same will be credited to proper accts.

Item.—Horse & eqmt, \$557.40 was amt paid for horse feed, including freight, which was lost in lightering from S. S. Portland, about 10.25, and am trying to recover value from S. S. Co. & Insurance Co.

PAGE 55.

CATILLA, ALASKA, Sept. to Dec., 1907.

Brot forward.		
5 Sundries, to cash.		
186 Engineer & survey, vchr. 150.		575
175 Road & trail % " " 150.		750
186 River & pkg. " " " 150.		230
186 Water right " " " 150.		206
180 Bdg. house st. " " " 150.		552.70
181 Horse & eqmt " " " 150.		213.50
Engineer & survey % as above was for work & expense in connection with the expert examination of coal lands by Guggenheims engineers. Clal n made for same 12/10 07.		
Road & trail acct. was expense incurred repalring and bridging below Clear Creek.		
River & packing is for cost of bringing supplies from steamer to camp during year.		
Water right is a new acct., represent sums expended in locating and holding water right at mouth (?) of Kustikaw Lake.		
Bdg. house stores were provisions and supplies for work of examination and chgd. to Guggenheim %.		
H. & E. % is sum paid McDonald to replace feed lost.		

2,528.28

PAGE 56.

Dec., 1907.

Amt. forward.		
4 Sundries, to cash.		
194 Railroad & harbor %, vchr. 151.		776
189 Salary " " 152.		600
186 General expense " " " 152.		152
145 Trav. exp. % dr.		300
186 To genl. expense %.		
Sums expended in trips to Spokane, Salt Lake, etc., on % coal land meetings.		300
186 Genl. expense %.		557.40
181 To horse & eqmt. %.		
Sum paid Galbraith, Bacon & Co. for feed charged to above % which was lost in transportation by S. S. Co.; when insurance is collected sum will be credited to G. E. %.		557.40
4 Cash, dr.		900
21 J. G. Cunningham.		
184 Boat & mach. %.		100
Above sum paid Dec. 1st by C. C.		800
Sold launch to Katalla Co.		
184 Boat & mach. %.		
(Launch sold) To cash.		

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CATILLA, ALASKA.

Dec. 1907.

Amt. forward.		
4 Cash %, to sundries.		1,279.60
186 Engineer & survey %.		575
180 Boardg. house st. " "		482.40
186 Genl. expense.		222.20
The above sum was received from Danl. Guggenheim in full for expenses incurred on account of the examination of coal lands on his account.		
Check received.		1,359.60
Less amt. due Jim McGrath.		80.

STATE OF WASHINGTON, *County of King, ss.*

Clarence Cunningham, being first duly sworn, deposes and says: On March 6th, 1908, at the request of L. G. Glavis, Chief Field Division, G. L. O., I made an affidavit relating to certain coal lands near Katalla, Kyak mining district, Alaska, in which affidavit I stated that some thirty-three (33) coal claims in said district had been located and held by affiant and individuals with whom affiant was personally well acquainted; that for the purpose of development an understanding existed between the coal claimants that when the titles were secured the claimants would combine their efforts in the development of the said claims. I wish to say in this connection that no agreement exists among the individual claimants so to do, nor is any claimant bound by any agreement or otherwise to combine with another claimant, even for the purpose of development. Affiant, after having certain correspondence with the Department of the Interior hereinafter referred to, by which the several claimants were permitted to avail themselves of the common sources of development for all of said claims, expressed the view to some of his associates that the same reasons which operated to require the common development would likewise require their community of effort in the operation of the claims when patents were issued. In this connection affiant calls the attention of the department to departmental letter of February 24th, 1906, bearing the numbers 26704-1906 N, which departmental letter bears the signature of the Assistant Commissioner J. H. Fimple, a true copy of which letter is attached to this affidavit and made a part hereof. Said letter bears the following: "E. B. C., E. A. F. H. G. P.;" that the letter written by affiant to the Department of the Interior, to which the letter appended is a reply, contains a sketch or plat of said mining claims, with full explanation as to the contour of the ground, and requested the department for its consent that the development work on said claims should be prosecuted as indicated in said letter last referred to, and affiant respectfully calls the department's attention to the said correspondence; that before the receipt of the letter of February 24th, 1906, and in response to the inquiries directed to the department by affiant, affiant received from the Department of the Interior a communication acknowledging receipt of his letter and advising him that the matter had been referred to the Attorney-General for an opinion, and that thereafter the letter hereto attached was received.

Affiant further states that each individual holder of said thirty-three (33) claims is free to make such disposition thereof as may seem to such holder meet and proper. Affiant further states that at all times heretofore and at the present time it is his purpose, as well as the purpose of the other claimants, in so far as he is advised, to acquire title to the said coal lands in good faith and for the purpose of developing the same as quickly as possible thereafter, and that the successful development thereof will probably be best brought about by a community of effort of the said several claims by reason of the facts above set forth; that each individual claimant is free from any obligation with the other to resort to the common development above referred to. And further affiant saith not.

(Signed) CLARENCE CUNNINGHAM.

Subscribed and sworn to before me this 28th day of April, 1908.

(Signed) LEROY V. NEWCOMB,
Notary Public in and for the State of Washington, residing at Seattle.

Mr. BRANDEIS. Now, Mr. Glavis, what do you know about the correctness of the copy?

Mr. GLAVIS. Well, I do not know; it looks like it is correct. I saw one little mistake there.

The CHAIRMAN. Mr. Glavis, did you make a copy of that journal?

Mr. GLAVIS. Yes, sir; we made a copy of it.

The CHAIRMAN. What became of that copy?

Mr. GLAVIS. That is out in Seattle; and then later on I sent the journal to Washington, and they made a certified copy of it here.

The CHAIRMAN. Is it in the Government office there?

Mr. GLAVIS. The copy I made?

The CHAIRMAN. Yes.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Who has charge of that office now?

Mr. GLAVIS. That is, I say it was there when I left. I do not know whether it is there now or not.

The CHAIRMAN. Who furnished this copy that is here in the book?

Mr. GLAVIS. I think they got that from the files of the General Land Office in Washington, D. C.; they made a certified copy of it.

The CHAIRMAN. Have they a copy of it here, too, in the General Land Office?

Mr. GLAVIS. Well, I think they have; they did have.

Senator FLETCHER. What became of the original journal?

Mr. GLAVIS. That was returned to Cunningham.

The CHAIRMAN. Very well; go on, Mr. Brandeis.

Mr. BRANDEIS. What was done in connection with these coal claims after March 6, and during the month of March?

Mr. GLAVIS. Well, I secured some more affidavits; I saw some more of the coal claimants in Seattle, and I got their affidavits, and then I told Mr. Cunningham that in order to save time, as he had stated in his affidavit, that his understanding of the facts relating to his coal claims was that the same facts related to the others—that I would mail a blank copy of that affidavit to the different coal claimants whom I had not interviewed and ask them if the statements were true, to corroborate this affidavit, or, if it was not, to prepare another affidavit or to add to the Cunningham statement any further statements that they might wish to make; and during March, I think, or during April, rather, I sent these out and they came back corroborating the affidavits of Cunningham.

Mr. BRANDEIS. Do you recall receiving toward the end of March—that is, March 28—a telegram from Commissioner Dennett in relation to the Cunningham claims?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Will you turn to page 467 of Senate Document No. 248 and see whether the telegram of March 28, 1908, there given, which is in cipher in part, is the telegram which you referred to?

Mr. GLAVIS. Yes, sir. The translation is not—that is, you have to read both of them, both the cipher and the translation, to get all the facts.

Mr. BRANDEIS. That is, there is first the telegram addressed to you and then below is the translation, which has to be supplemented by the ordinary words that are in the telegram?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And so supplemented, it reads:

Wire date this office will receive report in Cunningham group Alaska coal entries. Answer by wire quick.

And is the telegram of March 30, of which a copy appears on page 467, the answer which you sent?

Mr. GLAVIS. Yes; I think it is.

Mr. BRANDEIS. I introduce that answer also, which reads:

PORTLAND, OREG., *March 30, 1908.*

COMMISSIONER-GENERAL LAND OFFICE,
Washington, D. C.:

Matter mentioned in your wire 28. Will report Cunningham group for cancellation. Owing to transfer being made with Neuhausen and other parties, it is impossible to complete investigation before May. Entry men involved appear to be well informed concerning all action, as shown by your files. Should contents herein be learned additional information will be made impossible.

GLAVIS, *Chief.*

Now, what was the basis of that statement which you made in the telegram of March 30, "Entry men involved appear to be well informed concerning all action, as shown by your files"?

Mr. GLAVIS. That is because of a statement made by ex-Governor Moore, of the State of Washington, one of the Cunningham claimants.

Mr. BRANDEIS. When did ex-Governor Moore make that statement to you to which you refer?

Mr. GLAVIS. On March 6, 1908, in the afternoon, at the Rainer Grand Hotel, while Mr. Jones and I were taking the affidavit of Frank Cunningham.

Mr. BRANDEIS. How did ex-Governor Moore happen to be there?

Mr. GLAVIS. I do not know. He came in and Cunningham introduced us, and we spoke about the investigation—spoke of the cases.

Mr. BRANDEIS. You mean he did to you?

Mr. GLAVIS. Yes, sir; and Mr. Cunningham told him we were investigating the cases and that we had stated to him that we would soon make reports, and Moore stated to me that he was in Washington last winter and that during that time had seen Mr. Bullinger. He said the entries would have been patented long ago if it had not been for my protest.

Mr. JAMES. Who said that?

Mr. GLAVIS. Mr. Moore. And I told him that of course I had to make protests if I had any complaint, or something like that. It was rather embarrassing to us to have him know about it, for the reason that Cunningham thought it was based upon a complaint made by some outsider and was not coming from a special agent who was investigating them. We were a little afraid he might object to making the affidavit if we told him the truth about it, but he did.

Mr. BRANDEIS. Was there any such information being given out by the department?

Mr. GLAVIS. They were supposed to treat all reports and communications from special agents as confidential.

Mr. GRAHAM. Is there a rule of the department in that regard?

Mr. GLAVIS. Yes, I think there is; but I can not cite that rule. It is a rule that has been in force for a long time, I think.

The CHAIRMAN. I understood you to say that all ex-Governor Moore said was that the cases would have been passed for title except for your protest?

Mr. GLAVIS. Yes. He said there was nothing else against the claims.

The CHAIRMAN. He did not in that conversation indicate to you that the department had shown him any papers in the office?

Mr. GLAVIS. He most certainly did.

The CHAIRMAN. You did not say so before.

Mr. GLAVIS. I had not quite finished my statement.

Mr. BRANDEIS. How did he indicate that—what was it that he said?

Mr. GLAVIS. From the conversation—because he said that they would have gone to patent—he knew that; he knew that there was no good reason for their being held up any more. He led us to believe that he had seen part of the papers, from which I drew that conclusion.

Senator SUTHERLAND. Let me understand you, Mr. Glavis. Did he say to you that he had received any information from the department?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Had he seen the papers?

Mr. GLAVIS. Yes, sir; he had several talks with Mr. Ballinger about the matter, and they evidently had gone over the papers, and he said there was no ground for their being held up further until my protest came.

Senator SUTHERLAND. He said he had gone over the papers?

Mr. GLAVIS. He indicated to me that he meant Mr. Ballinger, because the only person he mentioned to me as having conferred with was Mr. Ballinger, the commissioner. And then he went on and said, "we had gone over the papers," and there was nothing against the claim except my protest; that if my protest had not come in, the entries would have been patented. Now, he did not reiterate the name of Mr. Ballinger, as I recall, having gone over the papers with him, but he said he had conferred with Mr. Ballinger and that "we had gone over the papers." I drew the only conclusion from what he stated to me that it was Mr. Ballinger with whom he went over the papers.

Mr. JAMES. Did he mention any other name in connection with the papers?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Was it that conversation with ex-Governor Moore that you had reference to when you sent the telegram of March 30?

Mr. GLAVIS. Yes, sir; it was.

Mr. BRANDEIS. Now, I will ask you to turn to page 63, of Senate document 248, and look at the letter which begins on that page and runs over to the next, dated Seattle, Wash., January 15, 1908, from Clarence Cunningham to the register and receiver, United States land office, at Juneau, Alaska, and I will ask you whether that letter had come to your attention at the time when you sent the telegram of March 30, 1908?

Mr. GLAVIS. No, sir. The first time I found out about this letter was about September 1, 1909.

Mr. BRANDEIS. I introduce that letter in evidence. It is on page 63, and it reads as follows:

SEATTLE, January 15, 1908.

REGISTER AND RECEIVER, UNITED STATES LAND OFFICE,

Juneau, Alaska.

GENTLEMEN: I am sending to-day by the mail clerk of the steamer *Seattle* duplicate trace of map for the Behring River Railroad Company, for filing. My understanding is that one copy is to be filed in Washington, but Mr. Hubbell advises me that you will take care of the matter after it reaches you. Consequently I will leave the whole thing in your hands. I wish to advise you, however, that it is quite important that we get these maps filed at the earliest possible date on account of the terminal facilities which we claim under this survey. I will be greatly pleased if there are any omissions or further requirements, if you will advise me what they are at once. As you know, this is a matter with which I am not familiar.

In my previous letter I referred to the nonarrival of plats which Mr. Dudley said would be sent me to be copied. I have looked in vain for these plats, and owing to the fact that Mr. Hubbell can not find the field notes among his papers here I am unable to have new ones made before these arrive.

I am glad to know that you sent your office copies on to Washington, for I am advised by Governor Moore that he is assured by the department chief that patents will be issued forthwith on arrival of plats unless some reason for withholding same is advanced by Special Field Agent Glavis, which is not expected. One would think, though, that if they were only waiting for the arrival of the plats they would issue the patents for those they already have; but up to the present I have no information that this has been done.

The commissioner has furnished us with copies of all the correspondence and telegrams relating to our entries between the various special agents and also with your office. Up to date everything seems to be approved by each special and department chief. So now our only delay will be occasioned through failure to receive plats, according to Judge Ballinger's advice.

I am particularly anxious to have these matters go through now at the earliest possible moment, for it looks as though it would be up to us to furnish our own transportation, in which case I must have all my financial and preliminary arrangements made before the season opens and take advantage of the long summer days if we expect to get into the market by next fall. You will therefore confer a very great favor if you can assist me in any way, and if you wish it any information or advice furnished me will be treated as strictly confidential.

Hoping you will see to it that the old plats are not delayed, I am, with very kind regards,

Yours, very truly,

CLARENCE CUNNINGHAM.

P. S.—Since the above was written Mr. Hubbell has informed me that the field notes would not be ready in time to go on this mail, so I am sending the maps for filing and will forward notes on next steamer.

C.

The CHAIRMAN. I want to call your attention to the fact that the third paragraph you read there is the phrase "He is assured by the department chief." And that the department chief at that time was Secretary Garfield?

Mr. GLAVIS. The department chief—I do not know.

The CHAIRMAN. Was not Secretary Garfield the department chief at that time?

Mr. GLAVIS. No, sir; he was Secretary of the Interior. I would think he meant a division chief, but I do not know what he meant.

The CHAIRMAN. Was not Garfield chief of the Interior Department at that time?

Mr. GLAVIS. Yes, sir; he was the head of it.

Senator FLETCHER. If he were the Secretary of the Interior he would not have called him "chief," would he?

Mr. GLAVIS. I would not think so. I do not know what he had in mind.

Mr. JAMES. Wouldn't they ever call the Secretary "chief?"

Mr. GLAVIS. No; I never heard it that way.

Mr. BRANDEIS. This word "commissioner" that appears in the first paragraph—"the commissioner has furnished us with copies"—

The CHAIRMAN. That is clear enough. Mr. Ballinger was commissioner at that time, but Mr. Garfield was Secretary of the Interior and chief of the department.

Mr. BRANDEIS. Were you aware at that time, Mr. Glavis—I mean at the time of your telegram of March 30, 1908, after you had left, about the 20th of December—that within a few days after Mr. Ballinger had given a hearing on these claims to ex-Governor Moore and other Cunningham claimants?

Mr. GLAVIS. No, sir; I never heard about that.

Mr. BRANDEIS. When did you first hear that any such hearing had been given by Commissioner Ballinger?

Mr. GLAVIS. The first time that I heard that was when I saw it in the record here.

Mr. BRANDEIS. You mean in this Senate document 248?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Within the last fortnight?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That appears in Mr. Schwartz's statement on page 460. I refer now, Mr. Glavis, to a letter from Commissioner Dennett, to you, of March 14, 1908, which appears in the record on page 148, which refers to your statements in regard—in your letter of January 22, 1908—your statements in regard to special agent H. K. Love, and asking you for a report on Mr. Love for submission to the President, or Attorney-General Wickersham—I refer to that letter particularly.

The CHAIRMAN. What page?

Mr. BRANDEIS. It is on page 148.

The CHAIRMAN. Exhibit 7?

Mr. BRANDEIS. Yes, sir; exhibit 7. The letter of March 14. And I would call the committee's attention to the reference to it in the Attorney-General's report. Before that, I will ask this question, Mr. Glavis: Did you furnish the information that was asked for by Commissioner Dennett?

Mr. GLAVIS. Yes; I did. Mr. Jones made an affidavit setting out this conversation that he had with Mr. Love, referred to in Mr. Dennett's letter to me, and I transmitted it to Mr. Dennett.

The CHAIRMAN. Is it in this book?

Mr. BRANDEIS. That does not appear in the printed record, and is among the documents that we have asked for. I call your attention now to the letter—

Mr. JAMES. Just a moment, please. I want to ask one question about this Clarence Cunningham. I notice in this letter this language is used: "Up to date everything seems to be approved by each special and department chief." What does that refer to?

Mr. GLAVIS. It means each chief of division in the General Land Office.

Mr. JAMES. It referred to the General Land Office there and to each special and department chief that had charge of the patenting of this land in the land office?

Mr. GLAVIS. Yes, sir.

Mr. McCALL. That seems to be clear enough there. On page 64, at the end of the next paragraph after that read by Mr. Brandeis, it seems that Judge Ballinger was referred to, because that concludes: "So now our only delay will be occasioned through failure to receive plats according to Judge Ballinger's advice." The preceding paragraph says that Governor Moore "is assured by the department chief that patents will be issued forthwith on arrival of the plat."

Mr. JAMES. You stated that ex-Governor Moore had a conversation with you, and told you—in Seattle, was it?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. You say that ex-Governor Moore had a conversation with you, and told you—in Seattle, was it?

Mr. GLAVIS. Yes.

Mr. JAMES. That Judge Ballinger had given him this advice?

Mr. GLAVIS. That he had taken the matter up with Judge Ballinger, and he had seen the records, and if it had not been for my protest that the entries would have been patented by now. He was discussing that, because we had told Cunningham that it would not be

our fault about having action taken on the cases, because we intended to hurry the investigation as much as possible and submit our report to the commissioner. Of course we did not tell Cunningham——

Mr. JAMES. He never made any statement to you that he had ever seen Secretary Garfield?

Mr. GLAVIS. No; he never said anything about Garfield.

Mr. BRANDEIS. You state that he told you about having had these talks with Commissioner Ballinger. Did he tell you anything about having had anything like a hearing before Commissioner Ballinger?

Mr. GLAVIS. No; he never used the word "hearing." He may have meant that, the hearing referred to in Mr. Schwartz's answer, but he did not tell us that at that time.

Mr. BRANDEIS. Now, I ask you to look at the letter from Miles C. Moore to the commissioner, which appears on page 467 of Senate document 248, a letter dated March 17, 1908. When did you first know about that letter having been written?

Mr. GLAVIS. I did not know anything about it until I was out of the service.

Mr. BRANDEIS. That is, you mean after your dismissal in September, 1909?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I desire to introduce that letter of ex-Governor Moore's in evidence.

Mr. McCALL. That is dated March 17?

Mr. BRANDEIS. March 17, 1908.

Mr. McCALL. At what time was it, Mr. Glavis, that Mr. Ballinger retired from the commissionership?

Mr. GLAVIS. He retired March 4, 1908.

Mr. McCALL. Then this letter was not written while he was commissioner?

Mr. GLAVIS. No, sir. My conversation with Mr. Moore also took place after Judge Ballinger had resigned. That was on March 6, at Seattle, Wash.

Mr. BRANDEIS. I called your attention to this letter and was about to read it.

Mr. JAMES. You say that conversation occurred on March 6.

Mr. GLAVIS. That is the one I had with Mr. Moore, in Seattle.

Mr. JAMES. But he had seen Mr. Ballinger before March 4, had he not?

Mr. GLAVIS. He had to, or he could not have made the trip from Washington, D. C., in less than five days.

Mr. JAMES. That is the point.

Mr. BRANDEIS. As a matter of fact, by referring to this letter of March 17 you will see, in the second paragraph, that letter refers to the time when he was in Washington——

[M. C. Moore, loans and investments.]

WALLA WALLA, WASH., *Mch. 17, 1908.*

HON. COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

SIR: The writer is entryman in coal-land entry No. 26, Kayak district, Alaska. Proof was made and final receipt issued April 23, 1907.

During a visit to Washington in January of the present year he was told that the issuance of patent on this and other claims in which Clarence Cunningham acted as agent was delayed pending the receipt from the Juneau office

of certain plats. These were telegraphed for and reported sent. Further examination of entry papers in the office of the mineral bureau disclosed the fact that the register at Juneau had neglected to affix his signature to some of the receipts. This occasioned further delay, but ample time has elapsed for this omission to be supplied.

Assurance was given that the entries were "clear-listed" by the various special agents and that the attorneys for the department were preparing a form of coal land patent for Alaska.

At Seattle a short time ago the writer met Messrs. Glavis and Jones, who were again investigating these entries. Their report can not be otherwise than favorable, but even if favorable it does not follow that still other agents will be detailed to make still other reports.

The entries have been gone over repeatedly and favorably reported upon, but still our patents are delayed and the development of the mines and the building of the line of transportation necessary to bring the coal to tide water are being retarded.

The coal, which is of superior quality, is needed all along the coast, as the coal here is now high in price and of inferior quality. If this coal, some of which is identical with the Pocahontas coal used by the battle ships, was now available, it would not be necessary to send supplies around the Horn in foreign transports.

These are interests too important to be subordinated to tedious technicalities and the delays occasioned by clerical errors, for which our people are in nowise responsible. In conclusion, it is urged that if there is any failure to comply strictly with Alaska coal land laws or the federal statutes, or if fraud is charged the nature of the irregularities or the charge should be made known.

Very truly,

(Signed) MILES C. MOORE.

Mr. OLMSTED. Is not the word "not" omitted in that letter there—it does not follow "that."

Mr. BRANDEIS. It undoubtedly should be there.

Mr. GLAVIS. It necessarily follows that it should be there.

Mr. JAMES. No. I do not think it necessarily follows that the word "not" should be there.

Mr. OLMSTED. It does not make sense then.

Mr. DENBY. He means to say that even had the reports not been favorable, still they might detail other agents.

Mr. BRANDEIS. Now, coming to the period after Mr. Ballinger went out of office as land commissioner—that is, after March 4, 1908, and before he became Secretary of the Interior—I ask you, Mr. Glavis, whether you, during that period, had any interviews with Mr. Ballinger with relation to the Alaskan coal claims?

Mr. GLAVIS. Yes; I had a number of them. The first time was after Mr. Ballinger had resigned his commission, either the latter part of March, 1908, or the first part of April, 1908; I do not remember which it was now.

Mr. BRANDEIS. Will you state to the committee what took place at the first of these interviews with Mr. Ballinger?

Mr. GLAVIS. I had three or four agents in Seattle at the time making investigations in Alaska coal cases, and we were getting very good evidence, and I wanted to call around and pay my respects; also, tell him how we were getting along. I called on him and told him what was doing, and also called his attention to some of the more or less sensational evidence we were securing about public men, and told him that the evidence against them was very strong, and he said to me: "There has been a good deal of that kind of muck raking." He said: "You want to be careful and not bring any charges that you can not meet." And I told him that I did not intend to. And

we were discussing the matter; I was telling him about some of the people that he knew who had made affidavits, and commenting on it just like any person would with any government official that he had been connected with.

Mr. BRANDEIS. But he was not a government official at that time.

Mr. GLAVIS. I looked upon him as such, anyway. I knew he was not, but he had only been out a short time.

Mr. BRANDEIS. You were merely talking over the general subject when you were there at that first interview.

Mr. GLAVIS. Another reason why I wanted to see him was that I knew that people would naturally be bothering him about the investigation, running to him, wanting to find out what he thought about it, and I wanted to give him our side of it at or about the same time that they gave him theirs, so that he would understand it.

Mr. BRANDEIS. I will introduce in evidence at this point a letter from Fred Dennett, commissioner, to Hon. R. A. Ballinger, Seattle, dated April 1, 1908.

The CHAIRMAN. What page is that on?

Mr. BRANDEIS. Page 644 of the record. I do not know that it is necessary to read the letter. It merely shows that it is in answer to inquiries made by Mr. Ballinger in regard to the practices and purposes of the office and a circular of March 3, 1908, which was issued just before he went out of office. When was the next interview or conference you had with Mr. Ballinger after the one you have stated?

Mr. GLAVIS. I saw him again—oh, probably two or three weeks, or maybe it was only a week after; and then I saw him two or three times there—well, within a week or two weeks of one another. I do not know just what time it was.

Mr. BRANDEIS. Was it in the spring or the summer?

Mr. GLAVIS. No; it was in the spring. I saw him two or three times that spring.

Mr. BRANDEIS. The spring of 1908?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, will you tell us what occurred at that second or third interview, or fourth interview, whichever it was, if you are not able to recall what occurred any time, as distinguished from another interview?

Mr. GLAVIS. Well, it was at the second or third interview during that spring I saw him. He was telling me that he was going to do some work for the Green group.

Mr. BRANDEIS. What was the Green group—one of the groups of Alaska claims?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And who were the men in the Green group, or any of them?

Mr. GLAVIS. Oh, there were about 73 or 80 of them.

Senator FLETCHER. Do you know where Mr. Ballinger was on the 1st of March, 1908?

Mr. GLAVIS. The 1st of March, 1908?

Senator FLETCHER. Yes.

Mr. GLAVIS. I think he was here in Washington; I am not sure. The testimony shows he was here March 2.

Mr. BRANDEIS. I think, then, it must have been a typographical error.

Senator FLETCHER. This letter says: "Referring to your telegram of March 1, 1908," and is written to him at Seattle, as if the telegram had been sent from Seattle March 1, 1908.

Mr. GLAVIS. I think that is an error.

Mr. JAMES. That shows that it is an error, because it says: "I inclose copy of instructions of March 3, 1908." He could not have been sending instructions two days before they were given; he evidently means April.

Senator FLETCHER. I think it is proper for the witness to state if he knows where Mr. Ballinger was on March 1, or what time he reached Seattle.

Mr. BRANDEIS. I will state that it appears from the record, from another portion of the record, that on March 3 Mr. Ballinger appeared before the Land Committee in Congress here in support of a bill in relation to the Alaska claims, so that he must have been in Washington on March 3.

Senator FLETCHER. The witness does not know of his own knowledge where he was in March, except the latter part of March.

Mr. GLAVIS. Either the latter part of March or the first part of April. When the reports arrive that we have asked for, I can tell, I think, the date, because our daily report would show the date that I had a talk with him, perhaps; if not, it will refresh my memory, showing me when I was in Seattle, and then I can tell you.

The CHAIRMAN. Did you make any note on your daily reports about this conversation?

Mr. GLAVIS. No, sir.

The CHAIRMAN. You were required to make daily reports, were you not?

Mr. GLAVIS. Yes, sir; of what we did.

The CHAIRMAN. But you would not report this conversation?

Mr. GLAVIS. We are not supposed to insert that in our daily reports.

Mr. BRANDEIS. How full would be your daily reports as chief of division?

Mr. GLAVIS. Well, when I am at headquarters it merely said, "office work," as a rule, or if we were working on any particular case, that is, that took all the time that day, we would probably state it. If we were in the United States court, for instance, or attending a trial, or when we were in the field, we would show it; we would show the day we arrived at a place, or the hour we left, and show the train and the railroad fare, and our expenses during that day.

Mr. BRANDEIS. Is the daily report of the special agents more full than the reports of the chiefs of division?

Mr. GLAVIS. I think that is usually the case; they were usually more full in my case. I think the other chiefs of division follow the same course.

Mr. BRANDEIS. Well, now, coming down to this second or third conference with Mr. Ballinger, you were about explaining he said that he was going to act—

Mr. GLAVIS. For the Green group; that he was going to prepare their articles of incorporation. He said he did not see any reason why he could not appear for them.

The CHAIRMAN. Let me ask you, there, was he going to act for them here in the Land Office, or was he simply going to present them and

get articles of incorporation out and guard them in their business out there?

Mr. GLAVIS. Any action that he would take in these cases would come under that act of May 28, 1908—he would have to appear before the Land Office. The articles of incorporation would appear before the Land Office. The steps to be taken necessary to bring about the consolidation of entries so as to permit them to come under this act would, as a rule, require at least action before the Land Office or before the local land office.

The CHAIRMAN. Was there anything more than advising them what steps to take to get the benefit of the act of 1908?

Mr. GLAVIS. Now, as to just what he did and what he advised them I do not know. I do not know what he advised them to do.

Mr. BRANDEIS. What would it be necessary to do; what are the things with reference to the title, so far as you know, that it would be necessary for him to do?

Mr. GLAVIS. It would come under this act to consolidate the claims of 2,500 acres—2,560 acres. The claims would have to be in a certain shape.

Mr. BRANDEIS. What do you mean by have to be “in a certain shape?”

Mr. GLAVIS. They had to be a certain width and had to be a certain length.

Mr. BRANDEIS. Would not the question have to come up as to whether the claims were in themselves valid claims for which patents could have been issued?

Mr. GLAVIS. They had to make affidavit to that, I think.

Mr. BRANDEIS. That is, they had to make affidavit to the effect that these claims were legal, bona fide claims under the law?

Mr. GLAVIS. Yes, sir. I do not know just the form of affidavit that they had to make, but there are some of them that will show the requirements; but they had to have a certain interest in the claims, and they could not be interested in other groups of claims.

Mr. BRANDEIS. What else do you recall, if anything, that occurred at that second interview?

Mr. GLAVIS. That may have been the third interview, I am not sure.

Mr. BRANDEIS. Or the third interview, whichever it was?

The CHAIRMAN. In this connection, I think it is appropriate, for the convenience of the committee, to put in section 1 of the act of 1908, page 706; in fact, the whole act. Let this act go right in that point, because section 1 says what they could do under that act by the way of grouping claims and forming corporations, and, as I understand Mr. Glavis, it was to bring them under the operation of this act that Mr. Ballinger advised them and drew up the incorporation papers for them.

(The act is as follows:)

[Public, No. 151—S. 6805.]

AN ACT To encourage the development of coal deposits in the Territory of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest, prior to November twelfth,

nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs or assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: *Provided*, That no corporation shall be permitted to consolidate its claims under this act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska.

SEC. 2. That the United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

SEC. 3. That if any of the lands or deposits purchased under the provisions of this act shall be owned, leased, trusted, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in anywise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of two thousand five hundred and sixty acres in the district of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney-General of the United States in the courts for that purpose.

SEC. 4. That every patent issued under this act shall expressly recite the terms and conditions prescribed in sections two and three hereof.

Approved, May 28, 1908.

Mr. JAMES. I think the witness disclaimed knowledge of what Mr. Ballinger did, Mr. Chairman.

The CHAIRMAN. He said that he drew the articles of incorporation for them.

Mr. GLAVIS. I said I knew he was doing that, but I did not know what else he was doing or what other advice he was giving them.

The CHAIRMAN. He was drawing the articles of incorporation for them, and this law of 1908 clearly contemplates that such a thing might be done.

Mr. GLAVIS. It only allowed entries to those who had in good faith made locations of coal lands.

Mr. BRANDEIS. Were you attacking or were you investigating the Green group with a view to setting aside their patents upon the ground that they had not in good faith made their locations?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And did you secure affidavits bearing upon those, among other claims?

Mr. GLAVIS. Yes, sir. We got affidavits about that group, too.

Mr. BRANDEIS. Was that group in question in the same way other groups were in question—the Hunt group or the Cunningham group?

Mr. GLAVIS. Yes, sir; just the same as the others.

Mr. BRANDEIS. Had you or Mr. Jones at that time taken any affidavits in regard to the Green group?

Mr. GLAVIS. I think Mr. Jones had taken quite a number; I do not remember whether I had taken any affidavits at that time or not.

Mr. BRANDEIS. I refer you now to the letter of August 10, on page 25 of the record, and you will find that the very first name in the

groups is that of the M. A. Green group—"See Exhibits Nos. 1 to 7, inclusive." You will observe that of about 25 affidavits taken from different persons 7 were of this Green group. Now, Mr. Glavis, is there anything else at that interview that you recall?

Mr. GLAVIS. No; I do not know whether it was at that time or at another interview that we discussed the other cases. No; it was later than that.

Mr. BRANDEIS. Before leaving the Green group let me ask you whether Mr. Ballinger continued after that time to represent the Green group?

Mr. GLAVIS. Yes, sir; so he represented to me.

Mr. BRANDEIS. And who represents the Green group now?

Mr. GLAVIS. I do not know who represents the Green group now. During the summer of 1909 Jack Ballinger, Secretary Ballinger's nephew—

Mr. BRANDEIS. He is a cousin, is he not?

Mr. GLAVIS. Or cousin.

Mr. BRANDEIS. He represented the Green group?

Mr. GLAVIS. Yes, sir. He came to my office and represented that he did.

Mr. BRANDEIS. Did the Green group at any time elect to claim under the act of 1908, or did they stand upon their original claim?

Mr. GLAVIS. I think they formed several companies, and they came under this new act, the act of May 28.

Mr. BRANDEIS. When was the next interview that you had with Mr. Ballinger?

Mr. GLAVIS. I think it was in June some time, 1908.

Mr. BRANDEIS. Do you recall anything that occurred at that interview; I mean where the Alaska coal lands were discussed?

Mr. GLAVIS. I am not sure whether it was at that time, but it was about that time. We discussed the suspension of our work, also the rules and regulations at that time under this new act of May 28.

Mr. BRANDEIS. And were they discussed with reference to these Alaska claims which had been the subject of investigation during the previous year?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. When did Mr. Ballinger resign from the General Land Office?

Mr. GLAVIS. March 4, 1908.

Mr. DENBY. There must be an error in this book. On page 465 there appears a letter signed by Mr. Dennett, under date of February 5, 1908, as commissioner.

Mr. GLAVIS. It ought to be acting commissioner.

Mr. DENBY. You are sure of the date when Mr. Ballinger resigned his office?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Mr. Ballinger was out of office from March 4, 1908, to March 4, 1909?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And these interviews were all during the time he was out of office that you are speaking about now?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Where were you during the month of July or August, 1908; were you in Seattle?

Mr. GLAVIS. I was up there in July, about the 15th of July, because I went to Alaska about that time.

Mr. BRANDEIS. And when did you return?

Mr. GLAVIS. The latter part of August.

Mr. BRANDEIS. After you returned did you see Mr. Ballinger again at any time when you discussed with him the Alaska coal cases?

Mr. GLAVIS. Yes, I saw him; it was not very long after I got back—I do not remember just how long it was—and we discussed the Cunningham cases and the Cunningham affidavit.

Mr. BRANDEIS. Are you able to fix the date of these interviews by any letters that passed between you and Mr. Ballinger?

Mr. GLAVIS. I am able to fix some of them.

Mr. BRANDEIS. What was the time in the fall of 1908 that you fixed as the date that any interview took place in regard to these coal claims?

Mr. GLAVIS (after referring to a paper). It was the time that he was telling me about the Cunningham affidavit; the first time he told me about it; it must have been along in September.

Mr. BRANDEIS. Now, what do you recall as to the Cunningham affidavit that Mr. Ballinger told you about?

Mr. GLAVIS. Well, the affidavit that he had made about me, about my having taken the journal. He claims to have charged me with having stolen the journal. Mr. Ballinger told me that he thought Cunningham was making that statement in order to square himself with other coal claimants for doing so silly a thing as giving it to me.

Mr. BRANDEIS. What else was said at the time?

Mr. GLAVIS. That is all that I remember.

Mr. BRANDEIS. Did he tell you anything at that time about an affidavit which Mr. Cunningham had made under his advice, which was dated September 4, 1908, which Mr. Ballinger afterwards presented to Secretary Garfield?

Mr. GLAVIS. He did not tell me about that then.

Mr. BRANDEIS. Did you at any time hear about that affidavit from Mr. Ballinger himself?

Mr. GLAVIS. Yes; he told me about making an affidavit at that time—it was either in October or November that he was down in Portland, Oreg.

Mr. BRANDEIS. I will introduce now, Mr. Chairman, that affidavit which appears to have been made under Mr. Ballinger's advice—the affidavit of September 4.

The CHAIRMAN. What page is it? I did not understand the witness to say that it had been made under Secretary Ballinger's advice.

Mr. BRANDEIS. Secretary Ballinger has said it himself. It is the affidavit which appears on page 497. It begins at the bottom of page 497 and runs through to page 500.

(The affidavit is as follows:)

STATE OF WASHINGTON, *County of King, ss:*

Clarence Cunningham, being on oath duly sworn, deposes and says that he is the same person that heretofore made affidavit in connection with said coal land entries; that in order to correct certain misapprehensions that have grown up in connection with the entry and development of said claims, and in order to furnish the department with full information in respect thereto, he makes the following statement of fact:

It appears that Special Agent L. R. Glavis has heretofore advised the department of the contents of the private journal of affiant, bearing date February 1st, 1908, which journal contains the following statement:

"Have options on certain coal property in Alaska, same having been examined by me in Oct., Nov., 1902, with the result that I have agreed to take up the options, and I am entering into verbal agreements with subscribers whose names will appear on the following pages, whereby each subscriber shall have one claim of 160 acres recorded in his name and will own same individually until such time as title can be secured.

"2nd. After title is secured each subscriber agrees to deed his interest to a company to be formed for the purpose of developing, mining, and marketing coal, receiving in payment for his claim stock in the said company, and in consideration for services rendered in securing this property and sums invested Clarence Cunningham shall receive $\frac{1}{3}$ of the said stock in said company."

It will be observed that this journal was made long prior to the existence of a law under which coal lands could be surveyed and entered in the district of Alaska. The options referred to in the above quotation were taken by affiant from the several prospectors, who had staked and claimed the ground by right of mineral discovery. Affiant was attracted to this field by reports of oil and coal discoveries during the summer of 1902, and late in the fall of the same year made a personal investigation of the land, with great difficulty, owing to the existence of snow, fallen timber, thick undergrowth, and the necessity of packing provisions on his back a distance of twenty-five miles or thereabouts. In December of 1902 affiant arranged with the prospectors to sell their discovery rights, provided samples taken justified such purchase. Affiant returned to Idaho and had analyses made of the samples, which appeared to justify the purchase. After this preliminary investigation affiant discovered there were no coal laws applicable to Alaska, owing to the fact that no surveys were authorized in the Territory, and was advised by counsel with whom he consulted that coal lands might be located under the mineral-land laws. Affiant consulted with a number of lawyers posted in mineral laws, and their advice was uniform upon this subject, as above mentioned. Acting under this belief and advice, affiant secured a number of friends to join him in the purchase of such claim of rights as was asserted by said prospectors. It was under these circumstances that affiant, with his associates, numbering eleven persons, each subscribing the sum of five hundred dollars (\$500) toward the expense of survey of claims, purchased all discovery rights, etc.; that the memorandum above mentioned was made fully believing at the time that the same was in perfect accord with existing law, and not with any idea of forming or attempting to form a combination or association in violation of any statute whatever, this procedure being customary in mining ventures where the locations are made pursuant to the mining laws.

Affiant further states that, as will be hereafter more fully shown, the contemplated arrangement set forth in said private journal was entirely abandoned, and the suggestion of the subsequent creation of a corporation by the subscribers for the original purchase of rights was never undertaken nor further contemplated. Affiant further states that, after the securing of said original subscribers, in company with an engineer, P. C. Stoess, he returned to Alaska in February, 1903, and they ran lines and staked twenty-two claims of 160 acres each. These claims were recorded for each of the eleven subscribers above referred to and for eleven other persons with whom affiant was associated in Idaho. Some of the latter persons, not choosing to take claims so far away, declined to come forward with their subscriptions, and Mr. A. B. Campbell temporarily advanced the pro rata expense of such prospective associates as fell out from the arrangement until other associates could be found to take their places. As a matter of fact, all of said advancements were repaid to said Campbell and substitute locators obtained, free from any interest, direct or indirect, in favor of said Campbell.

In May, 1903, affiant returned with men and provisions to carefully explore the coal field covered by said claims, spending during the remainder of that year over twenty thousand dollars (\$20,000) in such exploration, principally in the development of prospects on the various claims, having made over three hundred openings during that season. This work consisted of cuts and openings to find coal on each claim located; also building trails, warehouse, and camp for winter quarters. After establishing camps and becoming satisfied of the existence of coal on the surveys of each claim, affiant undertook to establish the feasibility of mining said coal at a reasonable cost and in commercial quantities. In pursuance of these designs, a tunnel was begun on a seam of coal which soon "pinched out." A second tunnel was undertaken, which ran

into a fault, causing much trouble and expense, and it was not until the following spring that affiant was able to determine that the coal seams were not merely superficial deposits.

In May, 1904, affiant was advised of the passage of the coal land act of April 28th, of that year, having been during all this time in Alaska attempting to open up and develop said coal seams and determine the character thereof. Immediately thereafter affiant took steps to have all of said claims relocated under the provisions of said law, entirely abandoning the effort to secure any rights under previous locations which had been attempted under the mineral law. This is a matter which can be established beyond question, inasmuch as the mineral locations had been filed in the local office of the United States commissioner at Kayak during the spring of 1903. Furthermore, previously to this all location lines were run along the strike or course of the coal veins, as is customary in mineral locations, the new law requiring all claims to be located according to true cardinal points. Affiant's engineer was immediately instructed to establish a meridian, erect his monument, and proceed to make his location surveys in accordance with said act of April 28, 1904. This work took all of the summer of 1904, and no development was carried on. On the completion of said surveys it was found that there were thirty-five claims embraced therein. Entry was at once made by thirty-three persons, all bona fide and including the former associates who had made locations under the theory that said lands could be entered as mineral claims. There was no agreement or understanding at the time of said entry, nor has there been any agreement or understanding since said entry, by which any entryman was to have any interest, right, or title of any nature whatsoever in any other entry in said field.

When the surveys were first made in 1904, affiant undertook to locate in 640 acre tracts, with four entrymen for each location, as is provided in the laws applicable to the States and Territories. This right was denied by the department in their construction of the statute applicable to Alaska. After filing declarations covering said thirty-three claims and recording powers of attorneys, as required by the statute, affiant undertook the completion of the surveys for patent early in the spring of 1905, which surveys were completed in June of that year. Thereupon a coal expert, Mr. H. L. Hawkins, was selected to examine said coal field to determine its commercial value, in view of the limited knowledge of affiant in coal mining and in view of the large expenditures of money entailed in the survey, opening up, and entry of said claims, affiant accompanying said expert and remaining until November, 1905. Upon receipt of the favorable report of said expert, affiant wrote the General Land Office at Washington for instructions as to the method of opening and developing said claims which would be approved by the department, sending along with said application for instructions a sketch of the locations, together with a statement that affiant was acting as agent for thirty-three entrymen, including affiant, and further requesting the right to develop said group of claims through one tunnel, provided the same did not jeopardize their rights under the law. The department replied to this request by letter "N" of the General Land Office, dated February 24, 1906, addressed to affiant at Wallace, Idaho, and in which letter the Commissioner of the General Land Office stated as follows:

"You ask whether these coal claimants can form a voluntary association to jointly construct a tunnel without prejudicing their right to secure title from the Government before said title is actually secured. You enclosed a pencil sketch indicating the location of the various claims and also situation of the proposed tunnel. You state the ground is very mountainous and abrupt, making it impracticable to open each claim with shaft or tunnel because of inability to reach them with roads or trams.

"The diagram indicates 35 claims, all of which, with one exception, embrace 160 acres which lie on a mountain side with a south slope. The proposed tunnel is indicated as commencing at the lower side of this group of claims and to be driven in a northerly direction through the central portion of the group, cutting the coal measures on the higher claims apparently at considerable depth and traversing both lower and upper measures indicated by outcrops upon the surface.

"The claims indicated upon the diagram are given names and are identical with coal claims surveys of which, number 37 to 71, inclusive, were approved by the United States surveyor-general for the district of Alaska on December 15, 1905, and reported by him to this office December 19, 1905.

"You are advised that it is contrary to the practice of this office to undertake to render an authoritative or binding opinion in any case other than one in which the record has been regularly transmitted for consideration and action. However, in view of the interests involved it is not deemed improper to state that, while the construction of a tunnel such as proposed would call for close scrutiny of each entry made for claims in this group as to the good faith of the entryman and as to whether he was securing his claim strictly for his own use and not directly or indirectly for the use or benefit of others or of an association or corporation, yet it is believed that the construction of the proposed drainage and working tunnel by a voluntary association to be composed of a portion or all of the coal claimants interested in the group, by means of their own personal and private funds, would not militate against the making of coal entries by the several claimants and would not imperil their right to secure patent upon said entries. The issuance of patent would, without doubt, be delayed until a full investigation of the matter could be had and the Land Department be fully advised as to all the facts in the premises.

"Very respectfully,

J. H. FIMPLE,
"Assistant Commissioner."

WPW20.

On page 5 of the journal above referred to, under date of September, 1903, there appears a memorandum of agreement with Mr. W. B. Heyburn. As soon as this affiant became aware that coal lands could not be taken in Alaska under the mineral laws, Mr. Heyburn, now Senator Heyburn, advised affiant in person that he could not act under said agreement, and later wrote affiant to the same effect, which letter is in words and figures as follows, to-wit:

"WALLACE, IDAHO, October 20, 1905.

"CLARENCE CUNNINGHAM, Esq.,
"Seattle, Washington.

"DEAR SIR: On frequent occasions I have stated to you that I did not desire to be interested in the coal lands in Alaska which you are proceeding to locate and patent. As I have already informed you, I do not desire to participate in or be interested in any manner, directly or indirectly, in acquiring public lands. I prefer during my official career to be absolutely free and clear from any possible interest in the subject-matter of legislation.

"Whatever services I may perform properly within my duty as a public official for yourself or any other constituent I shall cheerfully perform, but not for any consideration, directly or indirectly.

"In order that there may be no mistake about this, I desire to say that I do not desire any interest to be carried for me or on my account with a view to any present or future profit to myself.

"If I can be of service to you within the proper line of my duty I shall be glad to do so.

"With kind regards and best wishes for your enterprise and success, I am,

"Sincerely, yours,

"W. B. HEYBURN."

In addition to the statements set forth in that certain affidavit made by affiant, dated the 6th day of March, 1908, before L. R. Glavis, chief field division, G. L. O., affiant further states he knows of no individual entryman in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, incumbered or otherwise pledged in any sense whatsoever.

Affiant further states, in explanation of the following language of said affidavit:

"We have an understanding that when the patents had been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea that when titles were secured we would combine our claims and work the coal fields for ourselves."

that no combination or joint interest by way of corporate interests or otherwise was contemplated which would result either directly or indirectly in *parting* with title or any interest in any of said entries, but that the language above

quoted referred merely to the matter of development of said claims and the marketing of the coal mined therefrom, all of which affiant considered justified by the advice theretofore given by the department as above set forth in said letter of February 24, 1906. Affiant further states that said language last above quoted had no reference whatsoever to the primary agreement referred to in said private journal affecting said locations, in view of entry as mineral lands. Affiant further refers in this connection to the affidavit made by him under date of April 28th, 1908, before Leroy V. Newcomb, notary public, etc., and said explanations aforesaid are an extension of the explanations therein set forth.

In conclusion, affiant further states that each and every individual entryman of said thirty-three entrymen has advanced his own moneys in the payment of assessments for the expense of entry and development of his claim, and that none of said entrymen can in any sense be considered a dummy entryman, and by his affidavit he has fully complied with the laws authorizing the securing of patent for said lands.

And further affiant saith not.

(Signed) CLARENCE CUNNINGHAM.

Subscribed and sworn to before me this 4th day of September, 1908.

[SEAL]

(Signed) E. E. WALKER,

Notary Public in and for the State of Washington, residing at Seattle.

And in that same connection I will introduce the letter of Mr. U. A. Brown, which is on pages 655 and 656 of Senate document 248. Perhaps I had better read that letter (reading):

DEPARTMENT OF THE INTERIOR,
Washington, September 17, 1908.

DEAR CARR: I have just received the following memorandum from the Secretary:

"The inclosed affidavit in the Cunningham Alaska coal cases is to be filed in Land Office and direct Dennett to go over it carefully and bring to my attention on my return. No action to be taken till I come."

I also inclose a letter left with the Secretary by Judge Ballinger regarding a mineral agricultural contest which apparently has been delayed. The Secretary wishes this matter looked up and the proper action taken.

Very truly, yours,

HUGH A. BROWN.

Mr. D. M. CARR,

Private Secretary to Commissioner
of General Land Office.

The CHAIRMAN. Who is this Hugh A. Brown?

Mr. BRANDEIS. I understand that he is the secretary to Secretary Garfield. This particular letter was addressed to Mr. D. A. Carr, private secretary to the Commissioner of the General Land Office.

I think I should also at this time introduce in evidence the letter of Mr. Schwartz to the commissioner relating to this Cunningham affidavit, which appears on page 501 of Senate document 248.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sept. 23, 1908.

The honorable the COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I have considered carefully the attached affidavit by Clarence Cunningham. No law warranted the location of coal under the mining laws; from Cunningham's memorandum book it appears that of the original adventurers the Idaho crowd paid \$500 each and the Spokane crowd \$750 each. The original memorandum as to Heyburn is for "one claim of 160 acres in the coal."

That was in August, 1903, and it was not until October 20, 1905 (after, as Cunningham now states, the second series of locations and understandings were had), that Heyburn writes his letter quoted in the Cunningham affidavit; there never was a law warranting the location of mining claims, either in individual claims of 160 acres or in blocks of 640 acres located by four persons; on page

9 of the attached certified copy of Cunningham's book it appears that Mace Campbell (A. B.), in addition to paying for his own claim, No. 90, is carrying two dummies and putting up \$250 for each. The same state of facts appears on page 14. On page 15 purchasers are found to take over these claims in the person of W. H. Warner, of Cleveland, Ohio, and W. E. Miller, of Elyria, Ohio. The least that can be said of this transaction is that up to this time Cunningham, Campbell, and probably others, were in a conspiracy to deprive the United States of the possession, and citizens of the right, to prospect upon these 320 acres, for which like offences others have recently been convicted under section 5440. On page 20 it appears that Mace Campbell put up for five of the claims, including himself (this may, of course, have been a loan). On page 22 H. C. Henry, president of the National Bank of Commerce, at Seattle, takes one claim, theretofore being held out by Cunningham and his party. On page 23 three more persons are given claims, and on this page it appears that Henry White, who is a banker and merchant at Wallace, Idaho, takes over one of the dummies being carried up to that time by Mace Campbell, and on the same page it appears: "Claim carried by Mr. Moore was really by Mr. Campbell and transferred to Mr. Riblett." On page 25 the entrance of N. B. Nelson and Frank A. Moore, as claimants, is noted, and Cunningham says:

"Having 35 coal claims in our land, we sold one claim to each of the above parties, thus making 33 paid subscriptions."

Evidently there remained, at this date three dummies.

While Cunningham is strenuous in his affidavits that they are not a part of or bonded to the Guggenheims, it is a little peculiar that this memorandum book of expenses incurred should proceed along from day to day with great detail from the inception of the claims in 1902 until December, 1907, and then close with:

"The above sum was received from Daniel Guggenheim in full for expense incurred on account of the examination of coal lands on his account. Check received, \$1,359.60."

On page 54 Cunningham writes:

"The above vouchers, Nos. 146 to 149 (they aggregate \$102), include expense incurred by engineers making examination for the Guggenheims which should be repaid to us. I have made bill for the full amount paid on this account, and on receipt of payment same will be credited to proper accounts; "

and on page 55 Cunningham says:

"Engineer & survey a/c as above (\$2,526.20) was for work & expense in connection with the expert examination of coal lands by Guggenheim's engineers. Claim made for same 12/10/07."

I am still of the opinion that these claims were fraudulent, and that the orders issued to Chief of Field Division Glavis at the time the Alaska coal bill was pending in Congress to temporarily suspend his investigations, should now be revoked, and he should be directed to proceed with a view to establishing, by the necessary evidence, the complete facts in relation to the Cunningham and Guggenheim claims.

Respectfully,

(Signed)

H. H. SCHWARTZ,
Chief Field Service.

In that connection I will call the attention of the committee to the message of the President dated January 19, 1910, which I suppose is on your desk, which calls attention to an error of omission in this letter, in making a copy of this letter. The omission that I call attention to is this—it is on page 2 of Mr. Ballinger's letter of the 18th, which is transmitted by the President to the Senate. On page 501 of the Senate document is printed a memorandum by Mr. Schwartz, commenting on the sufficiency of the Cunningham affidavit. The original memorandum in the Land Office shows that the second sentence thereof, as follows, was omitted.

The CHAIRMAN. What page is that on?

Mr. BRANDEIS. Page 2 of this small sheet which has just been laid before us. The second sentence, as follows, was omitted: "It is ingenious but not convincing, although the showing is ex parte

and made after several weeks of very careful consideration by Cunningham and his attorneys."

The CHAIRMAN. Where does that come in in that letter?

Mr. BRANDEIS. That comes in, as I understand it, as the second sentence. It reads:

SIR: I have considered carefully the attached affidavit by Clarence Cunningham.

Then should come in:

It is ingenious but not convincing, although the showing is ex parte and made after several weeks of very careful consideration by Cunningham and his attorneys.

The CHAIRMAN. That should be inserted, then, between the first and the next paragraph?

Mr. BRANDEIS. Between the first and second lines. It happens to be, also, the first and second sentences. I think, in this connection, with a view to understanding the letter fully, that it may be well to read that letter in full.

The CHAIRMAN. Read it with the amendment now.

Mr. BRANDEIS. I will read it with the amendment (reads):

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sept. 23, 1908.

"The honorable the COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I have considered carefully the attached affidavit by Clarence Cunningham. It is ingenious, but not convincing, although the showing is ex parte and made after several weeks of very careful consideration by Cunningham and his attorneys. No law warranted the location of coal under the mining laws; from Cunningham's memorandum book it appears that the original adventurers the Idaho crowd paid \$500 each and the Spokane crowd \$750 each. The original memorandum as to Heyburn is for "one claim of 160 acres in the coal."

That was in August, 1903, and it was not until October 20, 1905 (after, as Cunningham now states, the second series of locations and understandings were had), that Heyburn writes his letter quoted in the Cunningham affidavit; there never was a law warranting the location of mining claims, either in individual claims of 160 acres or in blocks of 640 acres located by four persons; on page 9 of the attached certified copy of Cunningham's book it appears that Mace Campbell (A. B.), in addition to paying for his own claim, No. 80, is carrying two dummies and putting up \$250 for each. The same state of facts appears on page 14. On page 15 purchasers are found to take over these claims in the person of W. H. Warner, of Cleveland, Ohio, and W. E. Miller, of Elyria, Ohio. The least that can be said of this transaction is that up to this time Cunningham, Campbell, and probably others, were in a conspiracy to deprive the United States of the possession, and citizens of the right, to prospect upon these 320 acres, for which like offences others have recently been convicted under section 5440. On page 20 it appears that Mace Campbell put up for five of the claims, including himself (this may, of course, have been a loan). On page 22 H. C. Henry, president of the National Bank of Commerce, at Seattle, takes one claim, theretofore being held out by Cunningham and his party. On page 23 three more persons are given claims, and on this page it appears that Henry White, who is a banker and merchant at Wallace, Idaho, takes over one of the dummies being carried up to that time by Mace Campbell, and on the same page it appears: "Claim carried by Mr. Moore was really by Mr. Campbell and transferred to Mr. Riblett." On page 25 the entrance of N. B. Nelson and Frank A. Moore, as claimants, is noted, and Cunningham says:

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detail, from the inception of the claims in 1902 until December, 1907, and then close with:

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Respectfully,

(Signed)

H. H. SCHWARTZ,
Chief Field Service.

The foregoing letter contains the following notations on face: 9/26/08.

Mr. YELVERTON: Have these entrymen made an application to have their entries considered under the old or new law?

CARR.

Mr. CARR: Entries made under old law of April 28, 1904, and no application to consolidate under the new laws appears to have been made.

(Red pencil.) Mr. Dennett says hold for Mr. Schwartz's return.

9/29/08. J. D. Y.

Mr. BRANDEIS. Did you about that time, Mr. Glavis, see Mr. Schwartz?

Mr. GLAVIS. I saw him in October or September, 1908.

Mr. BRANDEIS. Where did you see him?

Mr. GLAVIS. I saw him at Helena, Mont.

Mr. BRANDEIS. And did you at that time discuss with him the Alaska coal cases?

Mr. GLAVIS. Yes, sir; among other cases.

Mr. BRANDEIS. Well, after that conversation with Mr. Schwartz did you have any other interview with Mr. Ballinger with regard to these coal claims?

Mr. GLAVIS. Yes, sir. I met him [referring to a memorandum] about the 12th or 15th of October; I do not know which it was.

Mr. BRANDEIS. Was that interview the result of an appointment?

Mr. GLAVIS. Yes, sir. I wrote him under date of October 6, 1908, and concluded in that letter as follows—I will read the last paragraph of it (reading):

I understand that you intend to be in Portland soon, and when you arrive I hope to have the pleasure of seeing you, as there are several phases of the Alaska coal cases concerning which I would like to discuss with you.

Mr. BRANDEIS. And did you have a discussion with him?

Mr. GLAVIS. Yes, sir. He replied on October 8, 1908.

Mr. BRANDEIS. What did he say?

Mr. GLAVIS (reading):

MY DEAR GLAVIS: Yours of the 6th at hand, and I thank you for the information contained therein. I expect to be in Portland, at the Portland Hotel, next Monday, and will see you.

Yours, sincerely,

R. A. BALLINGER.

The information contained related to some other matters; it had nothing to do with the coal cases at all. There was not any information relative to the Alaska coal claims. I want to make that clear.

Mr. BRANDEIS. That Monday was the 12th, according to the calendar. On that Monday, or shortly thereafter, he had this conference. Tell us what took place at that conference.

Mr. GLAVIS. He first called upon me in our office down in the custom-house in Portland, and I was not there, and he came over to the United States post-office. I was attending a criminal case there.

Mr. BRANDEIS. What case was that?

Mr. GLAVIS. The Pacific Furniture and Lumber Company case it is known as. It was a conspiracy case against eight or nine defendants, and in the afternoon I put another agent in charge and I went over to the Portland Hotel and had a talk with Mr. Ballinger for about an hour and a half, and we discussed various matters, among which we discussed the Alaska coal cases. It was in that conversation that Mr. Ballinger told me about Cunningham having made the affidavit that I had taken the book—I think it was that one instead of the other one. And he asked me if I realized that the Cunninghams were in a pretty bad fix, and he asked me how I thought they could get title. I told him that I thought if they relinquished their entries, and their wives or friends would file a claim, and they had no agreement, that they could get patents right away and never have any further trouble. Mr. Ballinger seemed to think that they would be placed in the same position that they were placed in at that time.

The CHAIRMAN. You mean if they would relinquish their claims to the Government?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And make them government lands, they could locate them over again?

Mr. GLAVIS. Well, they could not; their rights would have been exhausted by the first filings, but the others could have.

Mr. DENBY. Others could not file under the law, could they?

Mr. GLAVIS. If they had relinquished, and at the same time that they relinquished if some of their friends filed, they would be the first persons to have notice of it.

Mr. DENBY. Would not that be equally wrongful for others to file for their beneficial interest?

Mr. GLAVIS. Oh, yes; it would be if they had any agreement.

Mr. DENBY. Was not the suggestion rather looking to an evasion than a substantial compliance with the law?

Mr. GLAVIS. My idea was that the Cunningham claims were considered the strongest, always have been, among Alaska coal entrymen.

The CHAIRMAN. What do you mean by "strongest?"

Mr. GLAVIS. They were looked upon as being the most influential among the various entrymen, and they would be more apt to get the title than anybody else; and I thought that if I could get them to relinquish their claims that the others would follow the same course.

Mr. DENBY. Perhaps I misunderstood what you said. I understood you to say that you suggested to Mr. Ballinger that the Cunningham claimants might relinquish their claims and then their wives and their friends could take up the same claims.

Mr. GLAVIS. Yes, sir; that is what I said. My object was that if the Cunningham claimants would relinquish their claims all the other eight or nine hundred would follow suit; and at the same time had there been any agreements existing between the Cunningham claimants and those who would file, I could bring charges against them just the same.

Mr. BRANDEIS. If there were any such agreements?

Mr. GLAVIS. Yes, sir; if there were.

The CHAIRMAN. Were not these lands upon which these claims were located at that time in a reservation, in a forest reserve?

Mr. GLAVIS. A forest reserve did not prevent them from filing coal entries. But there was a withdrawal.

The CHAIRMAN. That is what I mean. There was a withdrawal made by the President, was there not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that while that withdrawal was effective, even if they had relinquished, there could be no new locations while the withdrawal was in force, could there?

Mr. GLAVIS. No; there could not. But I thought that perhaps they would be able to get that rescinded in some way.

Mr. JAMES. Your statement to Mr. Ballinger about how these people could get entries, by relinquishing and then having their families make entry, was in response to his inquiry to you how they could make entries?

Mr. GLAVIS. Yes, sir. If they would do it independently and have no understanding before they made the entry, it would be all right.

Mr. JAMES. This was called out by his asking you how they could make entries?

Mr. GLAVIS. How they could get patents.

Mr. GRAHAM. If the land was subject to entry, would that be lawful—that is, could wives and other members of families of adult age lawfully make entries?

Mr. GLAVIS. If they did not have any agreement before making the entry; yes, sir; they could take title then all right.

Mr. McCALL. Would it not be implied, necessarily, that there was an agreement, if the wives of 33 men should simultaneously make application?

Mr. GLAVIS. That was Mr. Ballinger's objection—the one you make.

Mr. OLMSTED. What benefit would it be for the Government to have these entries in the names of the wives rather than in the names of the men themselves?

Mr. GLAVIS. It would not be, had those original 33 claimants relinquished; we would have canceled all the other coal cases then without any further investigation, because I felt pretty sure that if the Cunningham claimants would relinquish their claims, that the others would follow suit; that they would be influenced by what the Cunninghams did.

Mr. OLMSTED. Did you think they would surrender their claims and that their wives would take them out?

Mr. GLAVIS. No; I thought we could cancel those; and then there was that doubt as to whether or not they would be able to get the land restored to entry.

The CHAIRMAN. It was simply this, that if they relinquished their entries that would restore the land back to the public domain, and if the embargo had been withdrawn other men could have entered these same lands at \$10 an acre, exactly as Cunningham had entered them?

Mr. GLAVIS. If the land had been restored.

The CHAIRMAN. If the land withdrawal had been revoked, other people could have entered the land at the same price?

Mr. GLAVIS. Yes; under that law.

The CHAIRMAN. Under the law of 1904?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Had you at that time received the letter of October 7 from Mr. Schwartz, acting assistant commissioner, which appears on the record at page 35?

Mr. GLAVIS. Yes, sir; I discussed that with Mr. Ballinger.

Mr. BRANDEIS. That letter should be introduced in evidence, as it is a very important one.

The CHAIRMAN. What page?

Mr. BRANDEIS. Page 35 and the top of page 36 (reading):

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., October 7, 1908.

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: Herewith I inclose you copy of an original affidavit filed in this office by Clarence Cunningham, by him sworn to September 4, 1908, in the matter of certain Alaska coal interests.

That was the first time you saw that affidavit?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS (continuing to read):

Your investigation of these coal interests was temporarily deferred during the pendency of the last Congress in a bill to provide additional laws for acquiring title to Alaska coal land. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally make adverse report and ask for the cancellation of these entries.

This office has been informally advised that the various entrymen, known as the Cunningham group, have concluded to stand upon the old law and ask for a patent upon the now pending applications. The reports as made by you to this office show that these applications were fraudulent and should be canceled. Proceedings will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the Government's case in the hearing.

I am also inclosing you a copy of a personal letter received in this office from Henry R. Harriman, with suggestion that said letter and a conference with Mr. Harriman may aid you in prosecuting your inquiries in reference to the Alaska coal situation.

Very respectfully,

H. H. SCHWARTZ,
Acting Assistant Commissioner.

And then follows the letter of H. R. Harriman to Hon. Fred Dennett, which appears on page 36, which I also introduce in evidence,

but which I think it will not be necessary to read at the present time.
The letter is as follows:

SEATTLE, September 5, 1908.

HON. FRED DENNETT,
The Normandy, Washington, D. C.

MY DEAR FRIEND: Our Mr. Lippy has just returned from a trip to the Katalla country, and a visit also to Cordova and Valdez. This is his first trip, and he comes back very enthusiastic with the possibilities and the resources which we have there. He also got a very good grasp of the transportation system, and he comes back thoroughly imbued with the idea that we have got to take care of ourselves and provide our own transportation, as we can expect nothing from the Guggenhelms, at least nothing that we would care to take.

Their recent treatment at Cordova of Jack Dalton (of Dalton trail fame) seems very significant, and while neither he nor we wish to start anything at the present time, still we believe you, or some one in the department, ought to know something about it. Mr. Dalton is not a particularly lovable character but he has the rights of an American citizen. As we understand it, he has twice started a wharf in the vicinity of Cordova, and both times the Guggenhelms have built out and surrounded his wharf, so no boats could approach it, and another time they had him arrested and thrown in jail for three days, and sent their men out and tore down his improvements and threw them into the bay.

It is such things as this, and the voting scandal of the recent election, and the more than general belief that they have purchased an interest or control in the Cunningham properties, that makes Mr. Lippy and ourselves very fearful that the same treatment may not be in store for the independent coal operators.

This is not, as you will see, a formal complaint, nor do I feel that we are bearing tales, but if such incidents are indicative of the real character of the trust's operations, we are going to be mighty glad to have the Government stand between us and them, as is provided in the new law.

I expect to write you, in your official capacity, something about our plans, to know just what we can do, and perhaps I may give this to Judge Ballinger when he comes east, but it would be a source of feeling of greater security by us little fellows if we thought that you had somebody there on the ground to give you information as to such acts as these, so that you could judge fairly and intelligently between us and the controversies which I fear a perseverance of this policy on their part is apt to force upon us.

Since we started out with the idea of making an independent shipping point on Kanak Island, they have not only revived the Cunningham railroad scheme, but I am informed have put three other surveys down to Kanak Island, and are trying to crisscross it and bottle it up.

In the meantime, I have sent north a double crew of railroad surveyors and engineers, who left on the 16th of last month, to get everything in shape on our right of way, so that we can go ahead. Some days ago I wrote a letter to Doctor Marr inclosing the fee, so that we could receive a copy of the filed right of way of the Bering River Railroad Company (Cunningham).

Very truly, yours,

H. R. HARRIMAN.

Mr. BRANDEIS. Now, Mr. Glavis, you were stating that you spoke to Mr. Ballinger about this letter. What did you say to him about it, or he to you?

Mr. GLAVIS. The manner in which that came up was this: We were discussing what action they might be able to take to get the patent. He was telling me the difficulties he was undergoing in securing campaign funds; that H. C. Henry and C. J. Smith, Cunningham claimants, had always been liberal contributors to the campaign fund, but this year they were mad because they had not gotten patents to these coal entries. And I told him about this letter of October 7. I said: "Judge, I am directed to investigate these cases right away," and he said: "Well, do not take any action on them"—he did not say take any action; he said, "I wish you would not act on them until after the election;" and I promised I would not; I told him I would

not take any action until after election, and I did not. But my reason for telling him that was that I was in the midst of this big conspiracy case, and I could not give the matter any attention at that time if I had wanted to. I let him feel, however, that I was doing him a favor.

Mr. BRANDEIS. Was there anything else discussed at that time?

Mr. GLAVIS. I do not think so.

Mr. BRANDEIS. It appears, Mr. Glavis, in the opinion of the Attorney-General, and also in the later letters of Mr. Ballinger after he became Secretary, that on October 5, 1908, a decision was rendered in your Portland Coal and Coke Company's case, which declared that the entries there were fraudulent?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And that opinion appears to have been rendered on October 5, 1908—that is, before this interview with Mr. Ballinger. Do you remember whether or not you discussed with Mr. Ballinger at that time the decision favorable to the Government which had been rendered by Judge Hanford?

Mr. GLAVIS. I am pretty sure I did not. The correspondence I have shows that I first discussed this decision with Judge Ballinger on November 24, 1908, at Seattle, Wash.

Mr. BRANDEIS. Why do you say that?

Mr. GLAVIS. Because this is a copy of the letter.

Mr. BRANDEIS. A copy of the letter you wrote to him?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. A carbon copy?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. You may read that letter, please.

Mr. GLAVIS (reading):

PORTLAND, OREG., November 25, 1908.

HON. R. A. BALLINGER,
Attorney at Law, Seattle, Wash.

MY DEAR JUDGE: Reverting to our conversation of yesterday, I take pleasure in transmitting herewith a copy of Judge Hanford's decision in the Portland Coal and Coke Company cases.

Respectfully,

Mr. BRANDEIS. That was signed by you?

Mr. GLAVIS. It is not signed; but I remember that it is a copy.

Mr. BRANDEIS. The carbon bears "Chief Field Division?"

Mr. GLAVIS. Yes, sir; and "Inclosure."

Mr. BRANDEIS. You were the chief at that time?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Did you get any reply to that letter?

Mr. GLAVIS. I got a reply, dated November 27, 1908.

Mr. BRANDEIS. Will you read that reply?

Mr. GLAVIS (reading):

R. A. BALLINGER,
SEATTLE, WASH., November 27, 1908.

MY DEAR GLAVIS: I am in receipt of yours of the 25th instant, inclosing copy of Judge Hanford's opinion in the case of United States v. Portland Coal and Coke Company et al., for which please accept my thanks. I have read the opinion, and find it is very strong upon the points stated, and I am glad to have the same and will make use of it with some of the Alaska people.

With best regards, I remain,

Yours, very respectfully,

R. A. BALLINGER.

Mr. LEWIS R. GLAVIS, Chief Field Division, Portland, Oreg.

The CHAIRMAN. Do you want those letters in evidence?

Mr. BRANDEIS. Certainly.

The CHAIRMAN. Hand them to the stenographer.

(The letters were handed to the stenographer.)

Mr. BRANDEIS. Your letter of the 25th shows that you had an interview with Mr. Ballinger on the day preceding—November 24. Do you recall what occurred at that interview, so far as it related to the Alaska coal claims?

Mr. GLAVIS. We just discussed this decision and compared the decision with the facts, as we knew them then, relative to the Alaska Coal Company, as being similar.

Mr. BRANDEIS. Did Mr. Ballinger at that interview, on the 24th of November, or at the interview on October 12 or 15, whatever the date was in October, say anything to you about the affidavit of September 4, 1908, which he had presented to Secretary Garfield on behalf of the Cunningham claimants?

Mr. GLAVIS. No, sir; he did not; no. I do not think he ever mentioned that to me.

Mr. BRANDEIS. You do not recall discussing it with him at any time?

Mr. GLAVIS. I remember him telling me about Cunningham making this affidavit. I have testified about that.

Mr. BRANDEIS. That is the affidavit about the journal?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That is a different affidavit?

Mr. GLAVIS. I never saw that one where he mentions those letters until afterwards.

Mr. BRANDEIS. Did you have any further interviews in regard to the coal cases with Mr. Ballinger before he became Secretary?

Mr. GLAVIS. Yes, sir; along in February, 1909, I had a talk with Mr. Ballinger. I went up to Seattle and while there I saw him in his office. I think it was some time in February, 1909; I do not know just what date it was.

Mr. BRANDEIS. What took place at that time?

Mr. GLAVIS. There had been a good deal of discussion about him being appointed. When I got up there, however, it had been determined that he was to be appointed Secretary, and I wanted to talk with him, naturally, about the conditions. I told him about the condition of the work in my division, and pointed out to him the reasons why there should be headquarters at Seattle, Wash., instead of at Portland.

Mr. BRANDEIS. Did you at that interview discuss the coal cases particularly, and any cases of a fraudulent character?

Mr. GLAVIS. Yes, sir. We discussed the coal cases then, and I told him I had not done anything yet with them. He said, "There has only been a technical violation of the statute; I think they ought to get their patents." And I agreed with him that where there was only a technical violation of the statute, that that should not prevent them from getting the patents.

Mr. BRANDEIS. Did either of you define what you meant by "a technical violation?"

Mr. GLAVIS. No; I did not. Mr. Ballinger seemed to have his ideas about that, but I did not tell him my ideas.

Mr. BRANDEIS. Did he discuss at that time particularly the Cunningham group? Was there anything said specifically about the Cunningham group or about the Green group?

Mr. GLAVIS. No; we just spoke generally. No; there was not anything said about them.

Mr. BRANDEIS. Now, this period between the spring of 1908 and the time in the fall when you saw Mr. Ballinger in October and November, had anything been done by you with a view to further investigating these claims?

Mr. GLAVIS. Well, when I first saw him in the spring, after he came back to Seattle, after having received his commission here, we were investigating the Alaska coal cases.

Mr. BRANDEIS. How long did you continue that investigation actively?

Mr. GLAVIS. I think there were three or four of us on it until about May 2, 1907. We were getting a lot of evidence in Seattle and elsewhere, and then we received a telegram from Mr. Dennett, the commissioner at that time.

Mr. BRANDEIS. In 1908?

Mr. GLAVIS. 1908.

Mr. BRANDEIS. You say you received a telegram under date of May 2?

Mr. GLAVIS. I think it was May 2.

Mr. BRANDEIS. I refer you to page 226 of the record and call attention to a telegram which is signed "Dennett" and dated May 2, and which is in cipher. Is that the telegram to which you refer?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Where is the translation?

The CHAIRMAN. Can you translate that?

Mr. GLAVIS. I can not, all of it. I do not remember the code words.

The CHAIRMAN. Does it not amount to this, Mr. Glavis, that you were to temporarily discontinue your work on the Alaska claims and go down and work on the Oregon claims?

Mr. GLAVIS. I did not catch your question.

The CHAIRMAN. Does not the telegram amount to this, that you were temporarily to discontinue the work on the Alaska cases and proceed to investigate the Oregon cases?

Mr. GLAVIS. No; the word "temporary" is not mentioned in the letter at all. The first part is "Discontinue investigation Alaska coal cases." And as to the other, I can not make out enough of the code words.

Senator SUTHERLAND. Is not the translation just above there?

Mr. GLAVIS. Oh, yes.

Mr. BRANDEIS. Just read that translation.

Mr. GLAVIS (reading):

Discontinue investigations now being made, Alaska coal cases; until letter reaches you defer action. Assign special agents to Oregon matters. Three special agents have been directed by wire to report to you at once for duty. This is rendered necessary by reason of depletion of appropriation involved. You will govern yourself accordingly.

DENNETT.

Mr. BRANDEIS. Now, Mr. Glavis, what had you done in this period between March and May 30, 1908—what had you done, for instance, during the month of April?

Mr. GLAVIS. I had three or four agents in Seattle and that vicinity; I think there were only three agents—I am not sure—and I was up there myself part of the time working on this Alaska coal investigation. We were getting a lot of evidence; sometimes we got from five to ten affidavits in a day. We were uncovering the fraud relative to the coal cases all during that month, right in the vicinity of Seattle.

The CHAIRMAN. Mr. Glavis, was it not a fact that not only the appropriation was running short, but the statute of limitations was pretty nearly out on the Oregon claims, and it was considered necessary that these cases should be taken up, in order that criminal and civil prosecutions could be instituted before the statute of limitations had run out?

Mr. GLAVIS. There were some cases down there; yes, sir.

The CHAIRMAN. And was not that one of the grounds why you were ordered down there?

Mr. GLAVIS. So far as the appropriation was concerned, the special agents were not at as much expense at Seattle as they would be in the field in Oregon, because all the expense in Seattle was car fare.

Mr. BRANDEIS. But you did have at that time, Mr. Glavis, various communications in regard to the exhaustion of the appropriation?

Mr. GLAVIS. Yes, sir; and there were some very important cases in Oregon, one case involving about a million dollars' worth of property that the six years would expire in about two months, and I wanted sufficient force to give the United States attorney enough information to bring the suits.

The CHAIRMAN. Was it not a fact that the appropriation was so scant that they felt they could not keep both these investigations going at the same time, and that the Oregon cases, for the time being, were more urgent, and that you and the rest of the men under you, or some of them, were sent down there to investigate these cases?

Mr. GLAVIS. We were all taken off the coal cases. If I had had two or three more agents, about six agents, rather, from other divisions, I could have handled both investigations.

The CHAIRMAN. Did you not, in one of your communications to the department—I can not refer to it now—indicate to the department that it was urgent that work should be done on the Oregon cases to avoid the statute of limitations?

Mr. GLAVIS. Oh, yes; I laid a great deal of emphasis on the necessity of that investigation; I also laid emphasis on the necessity for not discontinuing the Alaska investigation, because we were getting very satisfactory results from the investigations we were making at that time, and I advised them that to discontinue those investigations at that time might make it impossible thereafter to secure sufficient evidence to cancel them.

Mr. BRANDEIS. That appears by correspondence, and I think it will be best to put in the letters, Mr. Chairman.

The CHAIRMAN. I would suggest that you put in those other letters.

Mr. BRANDEIS. I will put in several. That appears by the communications in regard to the appropriation, on page 227 of the

record. The first is the letter of Fred Dennett, commissioner, to L. R. Glavis, under date of April 28, 1908, which reads as follows:

APRIL 28, 1908.

MR. LOUIS R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: The condition of the appropriation is such that it will be necessary, in order to carry the present force during the balance of the fiscal year, that the average monthly account of agents, including transportation, shall not exceed the sum of \$250 per month per agent.

You are advised that expenses incurred by you for the last quarter in excess of the sum of \$6,550 will not be paid. It appears from your statement that you had on hand April 1, \$1,180.84. You are advised that during the quarter an additional sum of \$5,369.16 will be deposited to your credit. Should the sundry civil bill as reported to the House by the Committee on Appropriations become a law, additional funds will be available for the month of June.

Very respectfully,

FRED DENNETT, *Commissioner.*

The following day, April 29, there appears the following telegram:

L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.

Miss Patten's appointment can not be extended. Detail Spaulding to your office temporarily. Letter follows.

DENNETT, *Commissioner.*

What does that refer to, Mr. Glavis?

MR. GLAVIS. Spaulding was special agent, and Miss Patten was my clerk. She was a temporary appointee there.

THE CHAIRMAN. Now read the telegram at the foot of that page.

MR. BRANDEIS. I will read, if I may, two more telegrams on that page.

PORTLAND, OREG., April 29, 1908.

Matter mentioned in your wire of 29th. If this is rendered necessary by reason of the depletion of the appropriation involved, it would be more economical to furlough Alexander. Spaulding necessary to assist me in interviewing 35 Alaska collierymen located in California. Miss Patten superior to Miller. Answer by wire.

GLAVIS.

And then the further telegram of the same date, which reads as follows:

PORTLAND, OREG., April 29, 1908.

United States attorney desires investigation of Umatilla cases and of thousand cases in which patents must be attacked within next few months. Trials commence May 16. Hearings and Alaska cases will engage force until July. To properly meet situation seven additional agents necessary.

GLAVIS, *Chief.*

I will also introduce now the letter which appears on pages 101 and 102.

THE CHAIRMAN. Now, in this connection, read the telegram on page 228, so as to get it in consecutive order—at the top of page 228.

MR. BRANDEIS. That is one that I have already read.

THE CHAIRMAN. I was not aware of that.

MR. BRANDEIS (reading):

Discontinue investigations now being made Alaska coal cases. Until letter reaches you defer action. Assign special agents to Oregon matters. Three special agents have been directed by wire to report to you at once for duty. This rendered necessary by reason of the depletion of the appropriation involved. You will govern yourself accordingly.

DENNETT.

That is one that was read first; that is the May 2 telegram. But before that telegram was sent—that is, before the telegram of May 2—there was a letter written by Mr. Glavis to the department of May 1, which appears on page 101 of the record, and which is very important in this connection. It reads as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., May 1, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Under date of April 29, I wired you as follows:

"United States attorney desires investigation of Umatilla cases, and thousand cases in which patents must be attacked within the next few months. Trials commence May 16. Hearings and Alaska cases will engage present force until July. To properly meet the situation, seven additional agents necessary."

After this telegram was sent I received your telegram of same date advising me that Special Agent Spaulding has been assigned here for duty and to dispense with services of temporary clerk, and to detail Agent Spaulding to assist in attending to the clerical work in the office.

Upon receipt of this I then sent you the following telegram:

"Matter mentioned in your wire 29. If this is rendered necessary by reason of the depletion of the appropriation, it would be more economical to furlough Alexander. Spaulding necessary in assisting me in interviewing 35 Alaska coal entrymen located in California. Miss Patten superior to Miller. Answer by wire."

No reply having been received to either of said telegraphic communications, I have the honor to report, in order that you may more fully be advised as to the urgent necessity for the additional force called for. The United States attorney has asked the assistance of this office in preparing the evidence in the Umatilla cases for presentation to the special grand jury, which he contemplates calling within a few weeks. Since you are familiar with the evidence and the many prominent persons involved in these cases, it is needless for me to dwell upon the importance of the case.

Within the past week, during the listing of the papers now in possession of Special Inspector T. B. Neuhausen, it has been found that there has been no action taken whatever looking to suit to set aside about four hundred patents fraudulently secured by F. A. Kribbs, and now presumably in the possession of Kribbs and the C. A. Smith Lumber Company, of Minneapolis, Minn., although the criminal phases of said case have been brought to a successful conclusion. The land involved is estimated to be worth over a million dollars, and the United States attorney desired to institute suit to set aside patents, and has written the Attorney-General for authority to do so; however, before he will be able to intelligently proceed, all the county records will have to be examined, and he looks to this office for securing this information and what other evidence it may be necessary to secure.

As I also stated in said telegram, the land-fraud trials commence on May 16, and the same will probably continue until September, and since it appeared from the advice I have received from you from time to time, it was your desire and that of the Secretary, that this office render the Department of Justice such assistance as they may deem necessary.

As also stated in my telegram, the hearings and Alaska cases will engage the present force until July. A number of other cases are now ready to be set for hearing so that the hearings will extend until July 1. The Alaska cases are now well under way and could not be dropped without greatly affecting the final outcome of the cases, because we have found, in the majority of the cases, that they are fraudulent and to indefinitely postpone further investigation at this time the persons involved would have ample time to advise the other coal claimants who have not, as yet, been interviewed, and in order to complete said cases by July 1, it will require all the time of the other agents who are not engaged in handling the hearings.

For the past five years the investigations of the land-fraud cases, and in fact most of the land matters in this division, have been conducted by the Secret Service, the Department of Justice, and special inspectors of the Interior Department. This I have always understood never met with the approval of your

office, and since taking charge of this division last October, I have diligently worked with this in mind, and with a view to arranging so that all such investigations should be made by the special agents of this division. I was congratulating myself upon the fact that this condition has been now brought around, and the officials of the Department of Justice are now looking to this office for co-operation and assistance. Now that this has been made possible, it is needless for me to express my disappointment over the failure to secure from you the additional force necessary to properly attend to these various matters which are of the utmost importance.

Of course I appreciate the fact that the appropriation is possibly running low, and that all the field divisions are in great need of additional agents; but the conditions existing here are not, perhaps, encountered in any other division, and unless some advice is received from you before to-morrow afternoon (May 2) I shall be compelled to explain to the United States attorney my inability to cooperate with him in said cases, and, as a consequence, I suppose he will ask the Attorney-General for authority to employ others to do the work.

The CHAIRMAN. Those are the Oregon cases, are they not, Mr. Glavis?

Mr. GLAVIS. They are

Mr. BRANDEIS (reading):

For the past few days I have given this office a wide berth in order not to inform him in the premises until just before leaving for California, as I have been in hopes that I would receive a copy of my two telegrams. When the land-fraud trials are commenced, I shall also be compelled to advise Mr. Tracy Becker likewise.

Who is Mr. Tracy Becker?

Mr. GLAVIS. He is special assistant to the Attorney-General.

Mr. BRANDEIS (continuing to read):

In justice to the special agents assigned to this division, I wish to state that for the past three months they have been in the field about 70 per cent of the time; the clerks also have worked overtime in order to keep up the work, but, as before stated, with the present force it will be necessary for the Department of Justice to look elsewhere for securing the assistance and cooperation necessary in the pending cases, unless you desire that all the routine work of the office be discontinued, all hearings postponed, and the Alaska cases neglected.

Respectfully,

L. R. GLAVIS, *Chief Field Division.*

Mr. BRANDEIS. Then, the next day you got the telegram which has already gone in evidence; and did you have any specific reply to that letter of May 1?

Mr. GLAVIS. No, sir; I do not think I did.

Mr. BRANDEIS. Now, what was done by you after May 2 in relation to the coal investigations, either in May, June, July, August, September, or October?

Mr. GLAVIS. There was not anything done.

Mr. BRANDEIS. Nothing?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Was anything done in November?

Mr. GLAVIS. Nothing was done in November.

Mr. BRANDEIS. Well, now, will you state how you were occupied between May 2 and December?

Mr. GLAVIS. Well, when I got that telegram calling me off the Alaska cases I used the agents that I had assisting me on those cases, together with two or three that they had sent from other divisions, in the investigation of these civil suits, and also kept up the routine work of the office and the other land-fraud cases in Oregon.

Mr. BRANDEIS. What important cases were you connected with, and what time did you spend on these several cases with which your agents were connected?

Mr. GLAVIS. Well, we worked—I do not remember what agents worked on them or just what time they worked; they were working all summer on different land-fraud cases, on some big unlawful fencing cases and some alleged conspiracies under the timber and stone act, and attending to the hearings and doing their routine work in the office. Then in July I went to Alaska with another agent, and we were gone until the latter part of August.

Mr. BRANDEIS. When you went to Alaska, was it in connection with these coal cases?

Mr. GLAVIS. No. I had just been given charge of the other work, the timber work of Alaska, and I wanted to make a trip to get an idea as to the best method of handling the work in that Territory; and we sold all the timber in Alaska—that is, the timber and stone act does not apply to Alaska, so people have to make application to purchase, and we appraise the value of the timber and sell it—and it was working out this new regulation that I went to Alaska; also investigate one special mining case that is in the Court of Claims here in Washington.

Mr. BRANDEIS. In the fall of 1908 you had several communications from Commissioner Dennett in regard to cases which you had been conducting during that period, had you not?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Will you refer to those letters now and see whether they do not refresh your recollection as to just what the cases were? Possibly you had better read the letters. They were from Mr. Dennett, I think.

The CHAIRMAN. Are those letters here in the record?

Mr. BRANDEIS. They are not. None of these papers that I have had the witness produce were among the papers.

The CHAIRMAN. Are those original letters?

Mr. BRANDEIS. They are the original letters received by him from Commissioner Dennett.

Will you read the letters in their order, Mr. Glavis?

Mr. GLAVIS (reading):

November 20, 1908.

MY DEAR GLAVIS: I am in receipt of Schwartz's note in regard to the matter of the alleged conversation with Wilson. I hadn't the faintest idea that there had been any such conversation, and merely sent it out to Schwartz to take up with you so that you could be advised of Wilson's statements. I called Yelverton's attention to it this morning on its return and he advises me that he thinks a second letter was sent down and signed. If it was so sent it was merely because I signed it perfunctorily without catching it. I have told Yelverton that I will not have any such letter go out; that my confidence in you and the rest of the boys who are in charge is such that I don't like criticism from this office based upon an ex parte statement.

I congratulate you on the termination of the Pacific Furniture case.

Mr. BRANDEIS. What was that?

Mr. GLAVIS. That was the criminal case—one of the old land-fraud cases that was tried. That took about a month or six weeks to try.

Mr. BRANDEIS. Where was that case tried, and when?

The CHAIRMAN. Was that an Oregon case?

Mr. GLAVIS. Yes, sir. That was tried the latter part of September or the first part of October and November.

Mr. BRANDEIS. And did you prepare the case before the trial?

Mr. GLAVIS. For the trial of it; yes, sir. It had already been investigated.

Mr. BRANDEIS. And you were in attendance on that case continuously throughout the trial?

Mr. GLAVIS. Yes, sir; I was there all the time.

The CHAIRMAN. Then, as a matter of fact, while you were laid off of the Alaska claims you were kept busy with these Oregon cases, were you not?

Mr. GLAVIS. Yes, sir; I was busy all the time on these Oregon cases.

The CHAIRMAN. And during that time you had ample opportunity to work?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. What cases were you working on in October when Mr. Ballinger requested you not to proceed further?

Mr. GLAVIS. I was working on the Pacific Furniture case when he asked me not to proceed further.

Mr. BRANDEIS. The case was on trial then?

Mr. GLAVIS. It was during the trial of this case that Mr. Ballinger was down in Portland at the time I had the conversation with him at the Portland Hotel.

Mr. JAMES. How long did he request you to stay off these cases?

Mr. GLAVIS. Off the Alaska cases?

Mr. JAMES. Yes.

Mr. GLAVIS. Until after the election.

Mr. JAMES. Who were the men he mentioned about contributing?

Mr. GLAVIS. He mentioned C. J. Smith, who is a prominent business man in Seattle, and also H. C. Henry, who is a banker and railroad contractor in Seattle.

Mr. BRANDEIS. Those are Cunningham claimants?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. What reason did he give for wanting you not to proceed further?

Mr. GLAVIS. They were having an awful hard time getting campaign funds. The same situation existed in Oregon; they were having trouble there because the people, some of them, were dissatisfied there.

Mr. JAMES. He thought if this investigation was stopped campaign funds would commence coming in?

Mr. GLAVIS. I do not know about that.

Senator SUTHERLAND. What did Mr. Ballinger say about campaign funds?

Mr. GLAVIS. He said he was having a great deal of difficulty in securing liberal contributions to the campaign fund that fall, and then he cited as an instance H. C. Henry and C. J. Smith. He said they had heretofore donated liberally to the fund, but this year they were very much dissatisfied; they were sore at the administration and the manner in which they had been kept from getting their patents.

The CHAIRMAN. It was at that conversation that you agreed with Mr. Ballinger that you would not press the cases until after election, was it not?

Mr. GLAVIS. Yes; I told him that. I could not investigate them anyway, because I was in the midst of that trial, and that trial lasted until, I think, after the election. I could not get away until after that trial was over.

Mr. JAMES. Did Mr. Ballinger in this conversation with you make any statement as to his having raised campaign funds, or the interest he was taking in that direction?

Mr. GLAVIS. I knew that; that he was——

The CHAIRMAN. Mr. Ballinger was not running for any office, was he?

Mr. GLAVIS. No, sir.

Mr. JAMES. Just a minute, Mr. Chairman. I did not catch your answer, Mr. Glavis. You knew what?

Mr. GLAVIS. I knew he was on the campaign-fund committee—I don't know whether they called it a committee—but he was telling me about his going around to raise the money.

Mr. BRANDEIS. If you will hand me your letter now, Mr. Glavis.

Mr. GLAVIS. I have not finished reading it. Shall I finish it?

Mr. BRANDEIS. Yes; I thought you had finished it.

Mr. GLAVIS (continuing to read):

You must be "head over heels" in work, but I trust you will keep us posted on the termination of these cases, from time to time, so that we can advise the Secretary's office of the progress of the work and make them realize that the boys are "up to date."

Very truly, yours,

FRED DENNETT,
Commissioner.

Mr. L. R. GLAVIS,
Portland, Oregon.

The CHAIRMAN. Do you put that letter in evidence?

Mr. BRANDEIS. We put that in evidence. Now, Mr. Glavis, what is the next letter you have?

Mr. GLAVIS. A letter dated November 24, 1908.

Mr. BRANDEIS. Will you read that letter, or shall I read it?

Mr. GLAVIS. You may read it.

Mr. BRANDEIS (reading):

WASHINGTON, D. C., November 24, 1908.

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oregon.

SIR: The honorable Secretary of the Interior wishes me to express to you his appreciation of the successful outcome of the prosecutions in favor of the Government in the cases of the Pacific Furniture Company and the Washington coal cases, the latter recently decided by Judge Hanford. This office joins with the Secretary in complimenting you for your work in these cases, and especially the quick work you made in the Pacific Furniture Company case, having only had the case turned over to you in April last.

Very respectfully,

FRED DENNETT,
Commissioner.

WWA

Is there one other letter?

Mr. GLAVIS. I haven't it with me.

Mr. BRANDEIS. I think there is one other letter—a personal letter to you.

Mr. GLAVIS. I do not know.

Mr. BRANDEIS. If you will just look through there, I think there is one other letter. I will have to introduce that letter out of order, Mr. Chairman, as Mr. Glavis does not seem to have it here.

Mr. GLAVIS. Oh, yes; here it is.

Mr. BRANDEIS. You have that other one?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. There is one other letter, dated November 30, 1908, from Fred Dennett, commissioner, and it reads as follows:

MY DEAR GLAVIS: Please accept my congratulations on the successful termination of the Portland Coal and Coke Company cases. The Secretary expressed his pleasure at the termination of these cases, as well as at the Smith verdict.

With best wishes,

Yours, truly,

FRED DENNETT, *Commissioner*.

The CHAIRMAN. What is the date of that letter?

Mr. BRANDEIS. That is dated November 30. The other one, I think, was dated November 24 or 26.

The CHAIRMAN. 1909?

Mr. BRANDEIS. 1908. These are all within the same month. What was this Smith verdict that you were congratulated on, Mr. Glavis?

Mr. GLAVIS. That was a criminal case that I was working on in October. It involved about a hundred stone entries and conspiracy under the timber and stone act. There were about 11 defendants. Four or five pleaded guilty, 5 were tried, and 3 were convicted.

The CHAIRMAN. Were they C. A. Smith entries?

Mr. GLAVIS. No, sir. That was not the case at all. C. A. Smith was a civil case; this was a criminal case.

The CHAIRMAN. Can you account for the fact that there were no criminal prosecutions instituted against the C. A. Smith Company?

Mr. GLAVIS. No, sir. That was before I was in Oregon, during that land fraud.

The CHAIRMAN. Civil suits were instituted?

Mr. GLAVIS. Civil suits were instituted at that time, but there was not any chance of bringing criminal suits. The statute of limitations had almost expired.

The CHAIRMAN. The statute of limitations had expired on the criminal cases?

Mr. GLAVIS. The statute of limitations expired in three years, and those on the civil cases expired in six years, and we had only two or three months to bring these suits.

Mr. BRANDEIS. How long did this Smith case take?

Mr. GLAVIS. Which one?

Mr. BRANDEIS. This one that you got the verdict in.

Mr. GLAVIS. That took me about six weeks. That is what we call the Pacific Furniture case.

Mr. BRANDEIS. That is the same case?

Mr. GLAVIS. Yes, sir; that is the same case.

Mr. BRANDEIS. The Attorney-General, on page 760 of this Senate Document No. 248, calls attentions as follows:

On April 11, 1908, in writing, he requested the General Land Office to—

Forward to me at Portland all original papers relating to Alaska coal cash entries and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitations will prevent criminal prosecution after next October. The cases therefore must be presented next month. Only Simmonds and Christopher groups now involved, but all papers are necessary should others develop, as time would then be too limited to secure same. (D., 24.)

On April 13, 1908, the General Land Office telegraphed him:

No entries of papers in this office except Cunningham group. Register and receiver at Juneau telegraphed to forward papers. (D., 24.)

On the same day Commissioner Dennett instructed the register and receiver at Juneau by telegram to—

Forward to Louis R. Glavis, chief of field division, Portland, Oreg., all original papers coal cash entries and coal declaratory statements of locations. (D., 25.)

May 20, 1908, the register and receiver advised Commissioner Dennett that—

Upon receipt of your telegraphic instructions of April 13, 1908, all of the papers on file in this office relating to coal-land declaratory statements and pending application and entries were prepared and forwarded to L. R. Glavis, chief of field division, Portland, as therein directed. (D., p. 25.)

Commissioner Dennett in his statement says:

When Mr. Glavis was here in May, 1909, I called his attention to the fact that complaints were being made that these papers were not on file in the local land office, and therefore were not open to consultation. He cited the authority which was given the register and receiver at Juneau to send these papers to him, and under which he held them. Upon my asking him whether they had been submitted to the grand jury he said "No." * * * Mr. Glavis still has, so I am informed, these papers. (D., p. 25.)

And, he might have added, he has never taken any action whatever to bring those criminal prosecutions which he advised the Land Office must be brought before October, 1908, to escape the bar of the statute of limitations.

Is that true, Mr. Glavis?

Mr. GLAVIS. No; it is not true.

Mr. BRANDEIS. What are the facts?

Mr. GLAVIS. It is absolutely false. In May or April, 1908, I had Special Agent Jones call upon the United States attorney at Seattle, Wash., Mr. Elmer Todd—I have forgotten his initial—and lay the matter before him, and he afterwards wrote me a letter stating that he would like the Department of Justice to direct—that he would present this matter to the grand jury—that because the lands were located in Alaska and the claimants were in Seattle, he was in some doubt as to the question of jurisdiction, whether the actions should be brought in Seattle or whether they should be brought in Alaska. I had a conference once or twice, I think, with him about that—at least I talked to him about it, and he wrote me this letter, and I prepared a report along in June to the Commissioner of the General Land Office, stating the facts, which I intended to transmit along with a copy of the United States attorney's letter, and recommended that the Department of Justice be directed to request the United States attorney to present the matter to the grand jury; but I learned that Dennett was expected in Portland a short time after writing that letter, so I did not send it, and when Mr. Dennett came to Portland we discussed the whole situation. I went over the evidence with him and showed him the United States attorney's letter, and we discussed it—that is, after I had been called off the case. I think it was along in July, some time between the 1st and 15th of July, that Dennett was in Portland, and he said that he thought they should not be criminally prosecuted; that if we canceled all the claims, that would be sufficient punishment for them.

Mr. GRAHAM. By "he" you mean who?

Mr. GLAVIS. Mr. Dennett.

Mr. BRANDEIS. He was then the land commissioner?

Mr. GLAVIS. Yes, sir; the land commissioner. That is why there was no prosecution.

Mr. JAMES. What offense had they committed?

Mr. GLAVIS. They had committed the same offense that we discussed this morning—conspiracy to defraud the United States.

Mr. JAMES. Well, they had to commit perjury to do that, did they not?

Mr. GLAVIS. Yes, sir. But it is very hard, much harder, to prosecute under the perjury statute than it is under the conspiracy statute, so we usually used the conspiracy statute.

Mr. JAMES. So that he thought keeping them out of the land would inflict sufficient punishment for committing perjury?

Mr. GLAVIS. They would be punished.

Mr. JAMES. If you kept them out of it?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. He took that view of it?

Mr. GLAVIS. Yes, sir; he thought they had not intentionally committed such a serious crime.

Mr. BRANDEIS. I call attention to the fact that the correspondence with Mr. Todd, to which Mr. Glavis has referred, is not in Senate document 248; we have included it in the list of documents requested.

Now, I call your attention, Mr. Glavis, to a series of letters which appear in the record, the first being the letter of May 12, 1908, which appears at page 228; and, second, the letter of May 28, 1908, which appears on page 229; and, third, the letter of June 3, 1908, which appears on page 229. I will read, first, the letter of June 3, 1908, because it is one which has been much discussed. It is a letter from Fred Dennett, commissioner, to L. R. Glavis, Chief of Field Division, Portland, Oreg., and it reads as follows:

JUNE 3, 1908.

Mr. L. R. GLAVIS,

Chief of Field Division, Portland, Oreg.

SIR: There is hereto attached copy of an act, approved May 28, 1908 (S. 6805), "To encourage the development of coal deposits in the Territory of Alaska."

You will, therefore, so modify the scope of your investigations and subsequent reports in reference to Alaska coal lands as is made necessary by the terms and provisions of the foregoing bill.

The General Land Office and the department appreciate the very thorough and efficient manner in which you conducted your investigation in reference to the real situation in the Alaska coal matters. It was largely by your report of facts that this office was enabled to prove by the record what are the necessities of the Alaska coal fields and what were the various efforts to unlawfully acquire title to such lands.

Very respectfully,

FRED DENNETT, *Commissioner.*

Now, turning back to the letter of May 12, 1908, on page 228, from the Secretary to Mr. Glavis, dated Washington, May 12, 1908, it is as follows:

DEPARTMENT OF THE INTERIOR,

Washington, May 12, 1908.

Mr. L. R. GLAVIS,

Chief of Field Division, Portland, Oreg.

SIR: Upon receipt of wire from the Commissioner of the General Land Office releasing this letter you are hereby authorized to employ, at a salary of \$7 per day, without subsistence, for service in bringing up the work in the General Land Office, not now current, and of official record in your office, the following

male temporary employees, for not exceeding six months: Two timber cruisers, competent to run survey lines and scale timber; two practical miners, who are competent to qualify as witnesses as to the coal or metalliferous character of lands.

Each of these temporary assistants must be men of good moral character and reputation, and have had previous actual experience in the particular line of service to be performed under this employment. They will submit usual daily reports through your office.

You are also authorized to pay their necessary transportation and sleeping-car fares while on official business within your jurisdiction.

You will make payments herein authorized from the appropriation for "Depredations on public timber, protecting public lands, etc."

Respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

(Through the Commissioner of the General Land Office.)

The CHAIRMAN. Mr. Brandeis, I suppose from this letter, where he speaks about releasing by wire, that this was not to become approved until the appropriation had passed?

Mr. BRANDEIS. That is it, precisely, and there is also a letter at the top of page 229—a telegram, rather, as follows:

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work; half immediately available. Limitation of office letter April 28 revoked. Push work.

The CHAIRMAN. Is that the letter relating to the suspension of the Alaska work?

Mr. BRANDEIS. No, sir; that was the letter limiting his general appropriation and telling him the obligations would not be paid. The suspension of the Alaska work was May 2. Now, Mr. Glavis, referring to those two letters of May 12 and June 3, and the telegram of May 28, was not that telegram a direction to you to resume work on the Alaska coal cases—was it or was it not?

Mr. GLAVIS. No, sir; it was not.

Mr. BRANDEIS. Why do you say it was not?

Mr. GLAVIS. Because it referred to the work they wanted to bring up—the routine work in Oregon.

Mr. BRANDEIS. Will you give the committee some idea of what that work was and what the conditions of those matters in the Oregon office were at that time?

Mr. GLAVIS. There were about possibly two thousand cases there, and there were a lot of cases coming in under the new regulations on the timber and stone act, which required us to estimate the timber and appraise the land, and there were cases there that had been pending eight or nine years, some of them since the entry had been made, and had not been patented yet. There were a lot of them four or five years old, and it was the purpose to bring that old work up to date, and also to keep up the work pending at that time.

Mr. BRANDEIS. Were you immediate chief, Mr. Schwartz, and the land commissioner, Mr. Dennett, informed of the work that you were engaged in constantly, and of the fact that no work whatever was being done on the Alaska coal cases?

Mr. GLAVIS. Yes, sir; we made the reports—all the agents did, and myself—and they were to go to a clerk in Mr. Schwartz's office, in the same room where Mr. Schwartz worked. This clerk handled the daily report. We also made a monthly report showing what work we had accomplished—no, I do not know whether we made a

monthly report at that time or not, but it was about that time that we did.

Mr. BRANDEIS. I call the committee's attention to another telegram, which I will put in evidence, dated September 23, 1908, and which appears on page 502, being a telegram of Davis to Schwartz, which is in cipher, but which, translated is as follows:

Matter mentioned in my wire of 23d; more special agents required for trials and Smith Lumber Company cases. Also Alaska situation and other matters. Will meet you in Helena.

Mr. Glavis, do you recall that telegram?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And you did thereafter meet Mr. Schwartz at Helena?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And as a result of that meeting, will you look at this telegram of Mr. Schwartz to the commissioner of April 29, which I now introduce in evidence, as follows:

HELENA, MONT., 29.

COMMISSIONER. GENERAL LAND OFFICE,

Washington, D. C.:

By wire to Glavis at Portland authorize thirty days' employment of two special assistants \$6 per diem, plus transportation expense, no subsistence; also at once advise Department of Justice that land office has assigned seven additional men and entire force available for necessary work in pending court cases. I have made assignments.

SCHWARTZ.

The following telegram contains the following notations on face: "Authority to Glavis to employ special assistants. Advice to Department of Justice. Answered by wire to Glavis September 30, 1908, and letter to Attorney-General September 30, 1908. M. F."

Also the following telegram on page 503:

M. F. "P" 03-169924. M. F.

JDY

DEPARTMENT OF THE INTERIOR,

Washington, September 30, 1908.

The ATTORNEY-GENERAL,

SIR: I have the honor to inform you that by wire from Helena, Montana, by even date, chief of the field service, H. H. Schwartz, advises the Commissioner of the General Land Office that seven additional men and the entire field force available at Portland, Oregon, have been assigned to necessary duty in pending court cases in that district.

Very respectfully,

(Signed)

FRANK PIERCE,
Acting Secretary.

F. D.

The CHAIRMAN. That is September, not December.

Mr. BRANDEIS. That is September 30, 1908.

The CHAIRMAN. I want to call your attention to page 229, on which there is a letter from the commissioner. Have you put that into the record?

Mr. BRANDEIS. Of June, 1908?

The CHAIRMAN. Yes.

Mr. BRANDEIS. Yes, sir; I have put it into the record and have read it.

The CHAIRMAN. That shows that Mr. Glavis was authorized to go on with the Alaska cases after that appropriation had passed.

Mr. BRANDEIS. I was just putting in these letters and was going to ask him, with the permission of the committee, a question in regard to that matter.

The CHAIRMAN. That letter of June 3 speaks for itself. It is a very brief letter. The appropriation passed May 28, and this letter was written on June 3.

Mr. BRANDEIS. Yes, sir. I will ask Mr. Glavis whether that letter and the telegram of the 28th were considered by him as instructions to proceed with the investigation of the Alaska coal cases, or, to put it in other words, as a revocation of the order given him May 2 to suspend investigations?

Mr. GLAVIS. No, sir; it was not. Mr. Schwartz did not consider it such either, and Mr. Dennett did not when we discussed the Alaska cases in July at Portland, Ore.

Mr. BRANDEIS. Why do you say that Mr. Schwartz did not so consider it?

Mr. GLAVIS. We had talked about when we would go ahead with the Alaska investigations, what was necessary to be done, and when we could do that work.

Mr. BRANDEIS. And what did Mr. Schwartz say?

Mr. GLAVIS. He realized that I was still under instructions not to investigate.

Mr. BRANDEIS. And when, if ever, did Mr. Schwartz discuss with you the resumption of the investigation of the coal cases?

Mr. GLAVIS. The first time we discussed it personally was along in 1909.

The CHAIRMAN. Mr. Glavis, I want to ask you to turn to page 229 of this report and look at that letter of the commissioner of June 3. Did you receive that letter from the commissioner?

Mr. GLAVIS. Yes, sir; I received that, and I received the copy of the act that it referred to. That letter was one of transmittal, transmitting that act.

The CHAIRMAN. Was that not authority for you to proceed with the Alaska investigation?

Mr. GLAVIS. No, sir; I did not consider it such. It said "so modify the scope of your investigations and subsequent reports." At that time I was not making any investigations of the Alaska coal cases. I considered if they wanted me to they might have thought that I had some reports that I could have made under that new act, and in view of the act and the evidence I had secured prior to that time.

Mr. BRANDEIS. Mr. Chairman, answering on this point, I would like to refer to a passage in the record here.

Mr. GRAHAM. Just a question there, please. At the time you received that letter you were in Portland, Ore.?

Mr. GLAVIS. Yes, sir; I was in Portland.

Mr. GRAHAM. Would it be necessary for you to have proceeded to Alaska in order to investigate the Alaska claims?

Mr. GLAVIS. It would be necessary to have made a full examination of the Alaska coal claims.

Mr. GRAHAM. Could you have pursued the Alaska investigation while you remained in Portland?

Mr. GLAVIS. Yes, sir; there were quite a number of people who we could have seen that we had not seen at that time.

The CHAIRMAN. As a matter of fact, Mr. Glavis, at that time, did you not have some of your force at work on the Alaska cases?

Mr. GLAVIS. In June; no, sir.

The CHAIRMAN. None of them?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Were they all engaged in the Oregon case?

Mr. GLAVIS. I might have had some agent at work in Alaska, but not on the Alaska coal cases. We had this timber work and other work.

The CHAIRMAN. So you had some of them up there?

Mr. GLAVIS. I might have had.

The CHAIRMAN. Why did you put them on the timber cases instead of the coal cases?

Mr. GLAVIS. Because I had not been directed to resume my coal investigation.

The CHAIRMAN. Had you been directed to take up the investigation of the other matters?

Mr. GLAVIS. I had not been called off of the other matters.

The CHAIRMAN. Then you had two sets of investigations going on all the time, one about the coal land in Alaska and one about the other land in Alaska?

Mr. GLAVIS. Oh, I did not have two sets of investigations going on at the same time.

The CHAIRMAN. I mean two classes of lands.

Mr. GLAVIS. Two classes of cases.

The CHAIRMAN. Two classes of lands—coal land and the other land.

Mr. GLAVIS. Oh, yes, sir; there were other kinds of cases instead of coal cases; there were mineral cases, and the selling of timber, and some two or three other matters.

Senator PAYNTER. Mr. Glavis, I have not read the act of—March, I believe it is—1908—

Mr. GLAVIS. May 28.

Senator PAYNTER. Has that any reference to timber or timber lands?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. This is the passage that I wish to call the attention of the chairman to on page 501, the last paragraph of the letter of September 23, 1908:

I am still of the opinion that these claims (namely, the Alaska coal claims) were fraudulent and that the orders issued to Chief of Field Division Glavis at the time the Alaska coal bill was pending in Congress to temporarily suspend his investigations should now be revoked and he should be directed to proceed with a view to establishing, by necessary evidence, the complete facts in relation to the Cunningham and Guggenheim claims.

That is dated September 28, 1908, three months after this letter of June 3 referred to; and I also call your attention, on page 229, to the passage in the letter of October 7, 1908, being a letter written evidently in pursuance of that recommendation of Mr. Schwartz, as follows: "Your investigation of these coal entries"—this is written to Mr. Glavis by Mr. Schwartz, and it appears in several places, but on page 229 it appears at the bottom of the page:

Your investigation of these coal entries was temporarily deferred during the pendency in Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had on these particular entries.

You are directed to complete your investigations along the original lines, and so prepare the Government's case as to be able to present all the facts at a hearing in the event you finally make adverse report, and ask for the cancellation of these entries.

Senator SUTHERLAND. I want to ask you a question on a matter that I did not understand: Were you investigating any coal-land matters in Oregon?

Mr. GLAVIS. Yes, sir; we had all the nonmineral entries classified as coal lands. We suspended, pending an examination by coal experts, or coal miners, to ascertain the mineral and nonmineral character of the land—that is, coal and noncoal.

Senator SUTHERLAND. Were you investigating coal-land matters in Oregon as well as in Alaska?

Mr. BRANDEIS. You speak of the routine business of your office—

The CHAIRMAN. I wish, Mr. Brandeis, that you would read that on page 230, next to the last paragraph in Mr. Schwartz's letter in this connection, commencing with the words "This office has been informally advised." etc.

Mr. BRANDEIS (reading):

This office has been informally advised that the various entrymen, known as the "Cunningham group," have concluded to stand upon the old law and ask for a patent upon the now pending applications.

The CHAIRMAN. That is the law of 1904, is it not?

Mr. GLAVIS. Yes, sir; that refers to the 1904 act.

Mr. BRANDEIS (reading):

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28 revoked. Push work.

The CHAIRMAN. That is sufficient.

Mr. GLAVIS. I would like to explain what he meant by "until I had completed my investigations of these Cunninghams." He meant by that the field investigations, because just before that I had discussed with Mr. Schwartz the necessity for field examinations.

The CHAIRMAN. Up to this time you had been simply securing affidavits from the different claimants in the Cunningham group, had you not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You had got affidavits from all of them at this time?

Mr. GLAVIS. Practically all of them. There was a lot of documentary evidence, but to make our case much stronger, we thought that some of the documentary evidence showed that they were working a tunnel and there would be a lot of work done on one claim for the benefit of all of them, and that the different entrymen were expending money for improvements on somebody else's claim, and we wanted to get that.

The CHAIRMAN. You could not well make that examination in May and June, could you, while you were on the Oregon cases?

Mr. GLAVIS. No, sir; this was discussed.

The CHAIRMAN. I mean you had taken all this record evidence, affidavits on different claims, and had got that practically completed before you went to Oregon, had you not?

Mr. GLAVIS. Yes, sir; we had got pretty near all that.

The CHAIRMAN. After you had completed that, and got all that kind of evidence, it remained simply for the field examination to be made; and you could not make that field examination until July on account of the snow and the climate, could you?

Mr. GLAVIS. No, sir.

The CHAIRMAN. So that, even had you been foot loose and had the money in May and June, you could not have gone up there to Alaska and made that field examination successfully, could you?

Mr. GLAVIS. No, sir; we could not.

The CHAIRMAN. The Government could not suffer any detriment by that?

Mr. GLAVIS. Not in the Cunningham cases; but it did, as I referred to in my report. I had not in mind solely the Cunningham cases, but I had 800 other—

The CHAIRMAN. Were not all those cases in the same region, back of those regions in the Katalla district?

Mr. GLAVIS. Yes, sir; there were about 700 more applications to be secured in the States that we had to secure. That is what I had in mind; retarding the investigation.

Mr. BRANDEIS. What was the significance of the field examination?

Mr. GLAVIS. To show that all the improvements were being made for the joint use and benefit of the several entrymen; that improvements, as would be indicated, had been made by the report of Cunningham's expert by one big tunnel. Well, all the machinery books showed that they—we—were paying the same men for this work done on one claim, and he thought that when we made a field examination and ascertained that, that then it would show conclusively that the other coal claimants must have had some understanding with the men that they were doing their work on the claims for. That is, I mean by that, that the same 32 men would not pay for the development of another man's coal claim unless they expected some return from it.

Mr. BRANDEIS. That is the actual working of these coal claims as they would appear from an examination in the field; you do not mean that they had an antecedent agreement for pooling all the claims and putting them into a single corporation?

Mr. GLAVIS. Yes, sir; that is it.

Mr. MADISON. You expected the evidence to show that the improvements that were made were made in common?

Mr. GLAVIS. Yes, sir; made for the joint use and benefit.

Mr. MADISON. Yes; that is what I meant to say, that the improvements were not individual improvements, but improvements that applied to the benefit of all.

Mr. GLAVIS. Yes, sir; and that the buildings and all were made like a company would make them.

Mr. MADISON. Certainly; that is the point exactly, that the improvements were in common.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. That the investigation there on the field would show that they were not acting separately, as 33 separate individuals, but all acting together in developing the property in unison?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. But you said you had discussed this matter with Mr. Schwartz, the importance of such an investigation?

Mr. GLAVIS. Yes, sir; as I recall, he did; he called my attention to the necessity of bringing out this particular point.

Mr. BRANDEIS. Now, you said that there were some six or seven hundred more applications in regard to coal claimants which you could get in various parts of the United States. Why was it that you did not finish up one case and then go to the next? Why did you keep them all going at the same time?

Mr. GLAVIS. Well, my idea was to investigate them and see all the people in that city at one time; otherwise I would just see those in a separate group at one time, and it would require years to finish the work and cost the Government thousands of dollars, whereas by seeing all the people in one city we made much better headway with the investigation, and also did not give them an opportunity to talk among themselves so much.

Mr. BRANDEIS. Was there any reason, from the point of view of protecting the Government's interest, why you did not want to bring one case to trial and hearing before the other and get a decision on it before the others were ready?

Mr. GLAVIS. Oh, yes, sir; we wanted to finish our investigation of all of them before any hearings were brought in in any particular one for the reason that there was a good deal of jealousy among the various coal claimants, and there was a good deal of talk that one was going to be shown more partiality than another, and they were getting so that they were talking among themselves, to a certain extent, and I wanted to see them fight among themselves. In fact, by some of them fighting among themselves, one would tell on one and the other on the other. I think that is indicated by Harriman's letter.

Mr. BRANDEIS. That is the letter that was introduced in evidence that was sent you by Mr. Schwartz in connection with the letter of October 7?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And that is the letter which I introduced in evidence, but I did not think it was necessary to read it to the committee. Now you have covered this period up to the end of November, showing how you were occupied up to November, 1908. Now, how soon after that did you begin to do work on these Alaska coal cases?

Mr. GLAVIS. It was in March, 1909, that I made the report.

Mr. BRANDEIS. Why did you not do any work during the month of December, January, and February in those cases?

Mr. GLAVIS. I was on the special cases, and we had over a hundred hearings to attend and a lot of other work. We had another conspiracy case at that time.

Mr. BRANDEIS. Was there also a special investigation undertaken at the request of Secretary Garfield?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. What was that investigation?

Mr. GLAVIS. That was taken up in January, 1909—in December, 1908, I came East on work on some large civil cases that were pending in the United States court.

Mr. BRANDEIS. What were those?

Mr. GLAVIS. It was the C. A. Smith cases.

Mr. BRANDEIS. What did they involve?

Mr. GLAVIS. They involved—well, they estimated roughly about a million dollars' worth of timber land in Oregon, and I came on to Washington about December 25 from Chicago. I was getting some evidence at Chicago, and Secretary Garfield wanted me, that is, directed me to make a report in Idaho—some charges that Senator Borah was making about the efficiency of the special agents' force there, and also some other matters—and I completed my work upon the C. A. Smith cases about June 15, in Idaho, took a special agent there, and we worked until about the middle of February. I went back to Portland once during that time. Then I had the time; I could get up with my work again, and got these reports out. I was ordered to make these reports on all the coal cases. That is the telegram of March 8 or March 10, I think.

The CHAIRMAN. It was in November that you got authority or were directed to resume investigation of the Alaska coal cases?

Mr. GLAVIS. Either October or November. I think it was October.

The CHAIRMAN. But you did nothing in that line from then until March?

Mr. GLAVIS. No, sir; I did not have the opportunity.

The CHAIRMAN. You did other work?

Mr. GLAVIS. Yes, sir. I could have put one or two agents perhaps on it, but it was work I thought I should give my personal attention to.

Mr. BRANDEIS. Why did you think you should give your personal attention to that work?

Mr. GLAVIS. It involved millions of dollars' worth of property and was an important case. I was personally responsible for the investigation and, furthermore, I had been more successful in starting each investigation of each group in a town by myself and then the agents following that work up.

Mr. BRANDEIS. That is, you considered it important that you personally should undertake to initiate the investigation as to each particular group.

Mr. GLAVIS. Yes, sir; I did.

Mr. BRANDEIS. And these other cases on which you were engaged during December, January, and February were cases that you had been directed specifically to take up there by Secretary Garfield or the Land Commissioner?

Mr. GLAVIS. Well, they were Senator Borah's charges. I was directed specifically to take up civil cases that it was necessary to take up after conferences with the United States attorney.

Mr. BRANDEIS. Now, the investigation undertaken under the direction of the Secretary in connection with Senator Borah's request took up how much of your time?

Mr. GLAVIS. It took up about a month approximately, and then we had a lot of hearings on reports where we took about three or four hundred affidavits.

The CHAIRMAN. There were four months then in this interval that you did not do anything on the Alaska cases?

Mr. GLAVIS. Yes, sir; we could not complete the investigation anyway.

The CHAIRMAN. After four months—after you had received instructions to take up the work again?

Mr. GLAVIS. Yes, sir; we could not complete the investigation any-way till the fall of 1909.

The CHAIRMAN. No, but you could have gone on with this other work of getting the other claimants in the other groups, could you not?

Mr. GLAVIS. We could have gone on with that, but it would not have expedited the reports any, because we could not make complete report till the fall of 1909.

The CHAIRMAN. I understood you to say that you could not dispose of the Cunningham cases until you got the proof on the other cases; that they were so connected that by keeping them all on the gridiron you could keep up the work?

Mr. GLAVIS. I could not complete the Cunningham reports until the fall of 1909. We had to make a field examination in each one of those groups. We did not know what we would find. We knew what we would find in the Cunningham cases, and we thought it of importance to make field examinations in each one of them.

The CHAIRMAN. How much of those four months were you at Seattle—what proportion of the time did you spend at Seattle during those four months?

Mr. GLAVIS. My headquarters at that time were at Portland, Oreg.; I do not think I was in Seattle but very little. My daily reports would tell exactly what days I was in Seattle.

The CHAIRMAN. Did you have any of your field force there?

Mr. GLAVIS. No, sir; except what actually might have been there going to Alaska on the timber work—on the routine work.

The CHAIRMAN. You had taken all of your force, then, away from the Alaska work on this other work in those four months?

Mr. GLAVIS. I took them off May 2, 1908. I had not put them on again when I was instructed in October to resume my investigations.

The CHAIRMAN. I am referring to the period in November when you had authority to resume the Alaska work—from that time until March you took them all away from the Alaska work?

Mr. GLAVIS. They were not in the Alaska work.

The CHAIRMAN. You did not put them on to that work—any of them?

Mr. GLAVIS. No, sir; I did not put them on to the Alaska coal investigation.

The CHAIRMAN. That is what I mean—none of your force.

Mr. GLAVIS. No, sir.

The CHAIRMAN. On any of the occasions, on any of the groups?

Mr. GLAVIS. The investigation could not be completed until the fall of 1909, so I had plenty of time then to wait until the spring of 1909 to begin the investigation.

Mr. JAMES. So there was nothing lost by the delay?

Mr. GLAVIS. No, sir; nothing was lost by the four months.

Mr. MADISON. Did you feel that the work you were doing at this time was imperative; that is, that it should be done at that time and be entitled to precedence over the Alaska work?

Mr. GLAVIS. It was very important work. I could not judge that on Senator Borah's matter, because I had given special instructions; I had no alternative; and in the C. A. Smith cases the United States attorney thought I should give that my attention.

Mr. MADISON. How much of those four months that have been referred to was consumed in the examination of Senator Borah's cases, which you say you were instructed to attend to?

Mr. GLAVIS. That took about a month or six weeks of our time—I do not recall exactly.

Mr. MADISON. About one-fourth of the time?

Mr. GLAVIS. Yes, sir; about that. We took a lot of those affidavits, those that had to be copied, and we had to make extracts from all the stuff.

Mr. MADISON. Did it require all your force on Senator Borah's work?

Mr. GLAVIS. No, sir; I had one agent working on it with me—two for a while.

Mr. MADISON. How much of the four months was consumed in these cases that the United States attorney said you ought to personally give your attention to?

Mr. GLAVIS. I spent about three or four weeks on that—pretty nearly a month, counting the traveling necessary to be done. Then we had a hundred or a hundred and fifty hearings in the land cases—those old homestead entries and other entries that some settlers had been waiting for a hearing on for four or five years; hundreds that had been suspended, and we thought, and in fact the office requested us to try all those old cases. It was not fair to delay action in them any more than it was on any other cases, and we were cleaning those cases up.

Mr. JAMES. If work had not been suspended in May, I believe it was, could you have completed these Alaska inquiries?

Mr. GLAVIS. Yes, sir; if the work had not been suspended in May we would have had complete reports in the General Land Office in the fall of 1908.

Mr. JAMES. In the fall of the same year?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Because you would have gone to Alaska, is that it?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. In the summer of 1908?

Mr. GLAVIS. Yes, sir. As it was, when the summer was over we could not do anything until the next summer.

Mr. MADISON. Now, during these four months of delay, that was in the winter, was it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. These men who were claiming these lands had perfected their title, except obtaining the bare legal title from the Government?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. That is, assuming that everything was all right, they owned the equitable title, and all that was necessary was to issue the patent and to give them the legal title—I say, assuming that everything was all right?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. So that they were in possession of the equitable title and in possession of the property during those four months, were they not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Could they have done work or made any improvements during those winter months?

Mr. GLAVIS. No, sir; they make the improvements in the summer time now.

Mr. MADISON. It would have been impossible for them to have done any work there in the way of improving their property during those months that you were delayed?

Mr. GLAVIS. I am not familiar enough with the conditions up there to state. I do not see any reason why they could not have kept a force of men in the tunnel if they had kept the snow away, so that they could have worked underground. They had been in the habit of doing most of their work in the summer time.

The CHAIRMAN. Mr. Glavis, I find on page 281 of this report, a letter of yours replying to the Commissioner of the General Land Office. It is a letter dated Portland, Oreg., September 19, applying for authority to purchase dogs for work in Alaska at \$50 apiece.

Mr. BRANDEIS. That letter had probably better be read into the record.

The CHAIRMAN (reading):

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Portland, Oreg., September 19, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Referring to my letter of this date in reference to the work in Alaska, I have the honor to respectfully make requisition for authority to expend \$400 for the purchase of six dogs at \$50 apiece and \$100 for equipment, such as sled, harness, etc.

And then the other sentence is not material. In reply to that you received a telegram from the commissioner as follows:

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 21, 1908.

L. R. GLAVIS,
Special Agent, General Land Office, Portland, Oreg.:

You are authorized to expend necessary part of \$500 for purchase of dog team and equipment as per your letter September 19. Do not purchase unless absolutely necessary.

(Signed) DENNETT, Commissioner.

Did you buy those dogs and start up with them to Alaska?

Mr. GLAVIS. No, sir; I did not buy them. That was a recommendation we made when we went through there in the summer of 1908 to consider how we could best sell the timber in Alaska. Most of the timber work was done in the winter time in the Fairbanks region.

The CHAIRMAN. So those dogs were intended for the timber work and not for the coal work?

Mr. GLAVIS. Entirely so. We could not make an examination of the coal land while the snow was on the ground, and this was for the winter work.

The CHAIRMAN. Did you buy the dogs?

Mr. GLAVIS. They did the timber work, but one of those that we sent up to Alaska that winter to do that work that arrived in southwestern Alaska they found that they could get along better, get over

the trail better, by not buying the dog team when they could. They took a horse and went over on a stage to the Fairbanks region and worked out of Fairbanks on foot. They did not use the dog team there.

The CHAIRMAN. It is now past 5 o'clock, and the committee will adjourn.

(Accordingly at 5 o'clock and 5 minutes p. m. the committee adjourned until to-morrow, Saturday, January 29, 1910, at 10 o'clock a. m.)

SATURDAY, JANUARY 29, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR
DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., January 29, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, and Fletcher; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Joseph R. Cotton, jr., representing Mr. Louis R. Glavis.

The CHAIRMAN. I desire the record to show at this point the letter of Secretary Ballinger dated December 21, 1909, to Hon. Wesley L. Jones, United States Senate, which was read by Senator Jones on the floor of the Senate.

(The paper is as follows:)

THE DEPARTMENT OF THE INTERIOR,
Washington, December 21, 1909.

MY DEAR SENATOR: Any investigation by Congress of the Interior Department or of any of its officers should be sufficiently broad and far-reaching to put at rest the suspicions, criticisms, and representations of corrupt or improper practices heretofore charged against the present administration thereof; and, furthermore, such investigation should embrace the Forest Service, since I have reason to believe that the pernicious activity of certain of its officers has been the source of inspiration of these charges and involve in part the common administration of the public domain.

The best interests of the Interior Department require a broad and thorough-going investigation, and I assure you it can not be made too broad in its scope to suit me and those under me, who have likewise suffered indignities, unjust censure, and deliberate misrepresentation of facts that are plain upon the records.

I therefore court the widest and fullest inquiry by Congress into these matters, and since you have stated to me your desire to aid me in establishing before Congress and the country the injustice of the attacks which have been made and reiterated from time to time, I shall hope that there will be no delay in the offering of a proper resolution of investigation.

The investigation called for by House resolution No. 142, to make a full and complete investigation of the conduct of the General Land Office of the Department of the Interior during recent years relative to coal lands and other public domain in the Territory of Alaska, etc., is entirely too narrow to accomplish a full and impartial investigation such as I desire.

Very truly, yours,

R. A. BALLINGER,
Secretary.

HON. WESLEY L. JONES,
United States Senate.

The CHAIRMAN. I also desire the record to show the letter of Mr. Pinchot to Senator Dolliver, dated January 5, 1910, and read by Mr. Dolliver on the floor of the Senate.

(The letter is as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE FORESTER,
Washington, January 5, 1910.

HON. J. P. DOLLIVER,
Chairman Committee on Agriculture and Forestry,
United States Senate.

MY DEAR SENATOR: In accordance with your request, I am glad to make a statement concerning certain actions of Messrs. Price and Shaw, chiefly in reference to claims for coal lands located within the Chugach National Forest. By my direction they have prepared an official report upon the subject, which I am transmitting at once to the Secretary of Agriculture.

This report shows that Messrs. Price and Shaw made public certain official information regarding the so-called "Cunningham claims" for coal lands in Alaska. The effect of the publication was to direct critical public attention to the actions of the Interior Department.

It shows also that they countenanced the publication by L. R. Glavis of certain facts concerning these claims after he had been dismissed from office, and that in other ways they endeavored to direct public attention to the imminent danger that the Alaska coal fields, still in government ownership, might pass forever into private hands with little or no compensation to the public.

The report further makes it clear that the information in reference to the Cunningham coal claims made public by Price and Shaw was properly within the knowledge of the Forest Service, because these claims lie chiefly within a national forest. This information, also, was of a nature proper to be made public unless there are secrets which the people of the United States are not entitled to know concerning the source, nature, and progress of claims made for portions of the public lands. The rumor that the Glavis report to the President was prepared in or by the Forest Service is incorrect. At Glavis's request I sent Shaw, as it was proper I should, to Chicago to assist him in arranging his material for submission to the President. No material contained in the Glavis report was contributed either directly or indirectly by any member of the Forest Service.

Messrs. Price and Shaw were confronted by an extraordinary situation. Information had come to them which convinced them that the public interests in a matter within the line of their official duties were in grave danger at the hands of fraudulent claimants to these coal lands.

Action through the usual official channels, and finally even an appeal to the President, had resulted (because of what I believe to have been a mistaken impression of the facts) in eliminating from the government service, in the person of Glavis, the most vigorous defender of the people's interests. Furthermore, the refusal of the Secretary of the Interior to assume responsibility in the cases had left their conduct wholly in the hands of subordinates, each of whom was apparently committed in favor of patenting these claims.

Finally, from the report as a whole, it is abundantly evident that the action of Price and Shaw was taken with the single object of protecting the property of the people of the United States. It is clear not only that they acted from a high and unselfish sense of public duty, but that they deliberately chose to risk their official positions rather than permit what they believed to be the wrongful loss of public property.

You asked me what recommendation I would make to Secretary Wilson as to Price and Shaw. Without hesitation I shall take the position that their action violated a rule of propriety as between the departments. It deserved a reprimand and has received one. But I shall recommend, likewise without hesitation, that no further action in their case is required.

My reasons for this recommendation are as follows:

The action of these two men was most unusual, but so was the situation which called it forth. The best proof is that Congress itself has been asked to take the extraordinary step of investigating the Department of the Interior, notwithstanding that it is part of a coordinate branch of the Government. This action of Congress can not be ascribed to the conduct of two subordinate officials.

Price and Shaw successfully directed public attention to a national danger. They increased the people's interest in the people's property, and powerfully

fostered the desire to conserve it. There is now far less chance that the Alaska coal fields will pass into the hands of fraudulent claimants than there was before they acted.

They acted on what they believed to be trustworthy information. Many considerations which had not been brought home to the President's mind, as appears from his letter of September 13, had weight with them.

The rules of official decorum exist in the interest of efficient administration, and of that alone. If they are used to prevent an honest and vigilant officer from saving the property of the public, their purpose is violated, and they have become worse than useless.

Price and Shaw concede that what they did transgressed propriety. But measured by the emergency which faced them, by the purity of their motives, and the results which they accomplished, their breach of propriety sinks well-nigh to insignificance.

I disclaim any intention or desire to shirk any part of my own legitimate responsibility for what was done by Price and Shaw, who were selected by me and trained in the Forest Service. If they appealed too readily to public opinion, it must be remembered that they belong to a service which has been and is now almost wholly dependent upon enlightened public approval.

I have known Mr. Price for about fifteen years and Mr. Shaw for about seven years. They are honorable men of great experience and high efficiency in their work, and of peculiar value to the Government. They endangered their positions and the chance to continue their life work for the sake of protecting the interests of the people in this country in a matter of vast public importance. They deserve no further condemnation.

What Price and Shaw did raises a question of principle which should not be obscured either by personal considerations or possible mistakes on their part. This question relates to the duty of a public officer. It may be answered thus: A public officer is bound first to obey the law and keep within it. But he is also bound, at any personal risk, to do everything the law will let him do for the public good.

In taking unusual steps under this principle of public duty the faithful public servant may risk reprimand or dismissal. So may any man who does his duty under difficulties.

Jefferson said, in justification for the unusual action of the Louisiana purchase:

"The Executive, in seizing the fugitive occurrence, which so much advances the good of their country, has done an act beyond the Constitution. The Legislature, in casting behind them metaphysical subtleties and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them, unauthorized, what we know they would have done for themselves had they been in a situation to do it."

When Price and Shaw forced publicity concerning the Cunningham claims, they broke no law, and at worst were guilty only of the violation of official propriety. Without question, they did for the people of this country what the people would have done for themselves had they been in a situation to do it.

Very sincerely, yours,

GIFFORD PINCHOT, *Forster.*

The CHAIRMAN. A record will also be made of the letter to the committee from Mr. Pinchot, dated January 25, 1910.

(The paper is as follows:)

WASHINGTON, D. C., January 25, 1910.

HON. KNUTE NELSON,

*Chairman Committee of Investigation, etc.,
United States Senate.*

SIR: I beg to comply with your request that I should submit a suggestion respecting certain matters which, in my opinion, ought to be included in the scope of the investigation to be conducted by your committee.

It is based on my belief that there is a real issue between the two departments now under investigation, not only in respect to fidelity to the administration of existing laws, but in their conception of national policy as to the public property under their respective control. The right attitude of administrative officers toward the great national policy of conservation has been in question throughout. For example, I believe that the history of the Alaska coal claims

demonstrates not only a lack of fidelity to the public interest under existing law, by the Department of the Interior, but shows conclusively the absolute necessity for a change in the law in the interest of national conservation.

My suggestion is this: That one of the efforts of the committee should be to obtain such information respecting the administration of the Department of the Interior and of the Forest Service in the past as will be of practical use in advancing the interests of the policy of conservation in the future. This means, among other things, a consideration of what has actually been done and is being done with our coal and timber lands and with our water-power sites under existing law, with a view to the framing of such a body of new legislation as will prevent the abuses that exist or are threatened.

To show the practical operation of our present laws and their administration, I suggest the committee's consideration of the following specific matters among others, each one of which has entered into and formed a part of the controversy now under investigation:

First. Have the laws governing the location and entry of coal lands been so administered as to fulfill the intention with which these laws were enacted? Have these coal lands been passing into the hands of those who need the bounty of the United States in the interest of the diffusion of prosperity, the promotion of settlement, and the general welfare? Or have they, in fact, through dummy entrymen and speculators, been steadily passing into monopolistic control? Should not better administration have been attained even under the existing laws, or is not new and constructive legislation imperatively necessary to prevent speculative exploitation, compel the use of the public coal lands for the public benefit, and protect them for present and future generations?

Second. Has the administration of the laws governing the disposal of water-power sites been as efficient for the protection of the public interest as existing laws permit? Or has there been an administrative failure to use such powers as the present laws give, and are the laws themselves, even if well administered, inherently deficient; and if so, ought not such measures to be forthwith adopted as will insure the preservation and reversion to the people as a whole of natural resources temporarily granted by them to individuals upon conditions which promise fit remuneration to the grantors, which prevent the private exploitation of the property of the people, and guard against the future concentration in a few hands of the one certain and perpetual source of industrial power?

Third. Are the laws governing the disposal of timber on Indian lands and the administration thereof such as to lead to the protection of these forests from fire, the protection of the forest itself on timber-bearing lands, and the prosperity of the Indians through the provision of a continuous opportunity for remunerative labor? Or are these laws and their administration such as to lead to the destruction of Indian timber by fire, the management of their forests by men unskilled in forestry, or the wasteful reduplication in the Department of the Interior of an organization fit to handle these forests already in existence in the Department of Agriculture?

The investigation of these matters will, I believe, satisfy the committee that existing laws are faulty and that their administration has in many instances endangered the public interest. The events which preceded my dismissal from the service of the United States were incident to the administration of unsound laws by officials with radically divergent conceptions of national policy. The great cause of conservation demands the enactment of a body of law that is both sound and clear. It must never be forgotten, however, that the welfare of the cause can not but be affected by the aims and methods of administrative officers. I respectfully suggest that the results of the investigation of this committee may be made of great practical value with reference to immediate legislation upon these subjects and to the establishment of right administrative practice. Some of the measures now pending contain features inconsistent with sound and enlightened policy.

This is, as I have stated, a suggestion respectfully submitted for your consideration. It goes without saying that I stand ready to meet any other issue that may be presented and that may seem to the committee within the scope of the reference. I should like to have it understood that I neither withdraw nor modify views heretofore expressed by me respecting the inadequate protection which the public interest has been receiving, but I am willing to subordinate all personal considerations to the advancement of the cause to which I am devoted.

In a communication heretofore placed in your hands you have been assured of the harmony of action between me and my former subordinates in the Forest

Service, Messrs. Price and Shaw. We are represented by the same counsel, who will be placed at the service of the committee for the purpose of presenting the matters which I have specified. I am assured that counsel for Mr. Glavis indorse the suggestion now submitted and are desirous of dealing with the present situation in a way consonant with its inherent importance and the dignity of the committee.

Very respectfully, yours,

GIFFORD PINCHOT.

The CHAIRMAN. The record will also show a letter to the committee from Secretary Ballinger dated January 22, 1910.
(The letter is as follows:)

THE SECRETARY OF THE INTERIOR,
Washington, January 22, 1910.

MY DEAR SIR: The resolution authorizing and directing the investigation upon which your committee is about to enter provides, among other things, that "any official or ex-official of the Department of the Interior, or of the Bureau of Forestry in the Department of Agriculture, whose official conduct is in question may appear and be heard before the joint committee or any subcommittee thereof, in person or by counsel."

Inasmuch as the resolution in its original form was introduced in both Houses of Congress at my request in order that certain baseless and scandalous charges involving my integrity as Commissioner of the General Land Office, and later as Secretary of the Interior, might be fairly and impartially investigated by a committee of Congress, I am not in error, I imagine, in presuming that the investigation will call in question my official conduct and that I would be entitled to claim from the beginning of your labors, the benefit of counsel provided for in the provision above quoted. In order that the committee may be under no misapprehension as to my purpose in that regard and take order as to its procedure accordingly, I beg to inform the committee that I shall not appear before it by counsel, nor in my own proper person, except as a witness whenever and as often as called on by the committee.

I shall not criticise others who may deem it proper to take advantage of the provision of the resolution to which I have called attention, but it does not seem becoming in one who sustains toward the Chief Magistrate of the Republic the relation of confidential adviser and immediate deputy in the administration of one of the departments of the Government, to have the appearance of imposing any check or obstacle, however slight, to a full and free investigation of his official conduct by the legislative branch of the Government. Animated by that view I shall leave the investigation entirely in the hands of the committee, confident that the only safeguard needed by me against the wanton and wicked assaults to which I have been subjected is a full, fair, and impartial investigation by honorable and high-minded men acting under a high sense of the responsibilities of their positions.

I beg to further state to the committee that the records, books, documents, and papers in the department, or any of its bureaus, as well as my personal letters and files, are all freely at its service for the purposes of this investigation, and also the time of any officers or employees who may be supposed to have knowledge concerning the matters under investigation, and that I hold myself ready to appear before it at any time to testify personally as a witness, or to give it information in my official capacity, or otherwise.

With high respect, your obedient servant,

R. A. BALLINGER, *Secretary.*

CHAIRMAN OF THE JOINT INVESTIGATION COMMITTEE
OF THE TWO HOUSES OF CONGRESS.

TESTIMONY OF LOUIS R. GLAVIS—Resumed.

The CHAIRMAN. The committee will come to order; a quorum is present. Will you proceed, Mr. Brandeis?

MR. BRANDEIS. You stated, Mr. Glavis, that from the receipt of the telegram of May 2, 1908, ordering you to discontinue the investigation in the coal cases, up to the beginning of March, 1909, no action was taken by you. You called attention to the two letters which had been received by you, one letter of June 3, 1908, and the other

letter of October 7, 1908, in reference to work on these cases. I ask you whether, aside from those letters, you received any communications, either by letter or telegram, relative to your resuming work, or not conducting work on the Alaska coal cases?

Mr. GLAVIS. No, sir; I did not.

Mr. BRANDEIS. During that time you had a number of interviews, did you not, with Commissioner Dennett and with Chief of Field Division Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Can you state when they occurred?

Mr. GLAVIS. I saw Mr. Dennett in July, 1908, and I——

The CHAIRMAN. Where?

Mr. GLAVIS. At Portland, Oreg.; also at Seattle, Wash., about the same time. It was during the same visit that he was on the coast. I saw him at both places.

The CHAIRMAN. In July?

Mr. GLAVIS. In July, 1908.

I also saw him in Washington, D. C., in December, 1908, and I saw Mr. Schwartz at Helena, Mont., in September, 1908, saw him again in Washington, D. C., during December, 1908, and I do not recall having seen him any other time. I may have, however.

Mr. BRANDEIS. At any of those interviews was anything said to you relative to your continuing the investigation, or any complaint made that you were not pursuing the investigation on the Alaska cases?

The CHAIRMAN. Mr. Brandeis, would it not be well to have the witness state what transpired——

Mr. BRANDEIS. Certainly——

The CHAIRMAN. Instead of asking him a leading question like that. Let him go on first with Mr. Dennett's interviews with him.

Mr. GLAVIS. I already related the interview I had with Mr. Dennett in July, at Portland, yesterday; shall I repeat it?

The CHAIRMAN. Then go on to the one at Seattle.

Mr. GLAVIS. There I just met him; that was all. He told me he was going to Portland and would see me down there and go over the business. I saw him there two days before he came to Portland.

Mr. MADISON. Just to refresh our recollection, state, briefly, here the conversation you had at Portland.

Mr. GLAVIS. Well, he was there part of two days, and we discussed the work in general. We discussed my going to Alaska and making a report as to the manner in which we could handle the timber up there. We discussed the coal cases, including my report transmitting or furnishing a copy of the United States attorney's letter asking that I get the authority of the Department of Justice——

The CHAIRMAN. This is what you explained yesterday?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. I just asked you to state it briefly to refresh our recollection.

Mr. GLAVIS. Then in December we discussed the work while I was here in Washington in a general way.

Mr. MADISON. That is all; I merely wanted to refresh our recollection——mine at least.

Mr. GLAVIS. And Mr. Schwartz and I discussed the necessity for additional help on the——

The CHAIRMAN. Where did you discuss it with Mr. Schwartz, here or out west?

Mr. GLAVIS. I was referring to the interview I had at Helena, Mont., in September, 1908.

The CHAIRMAN. What took place there at Helena?

Mr. GLAVIS. We discussed the necessity for additional help in the land court trials that were about to come up at Portland, Oreg. We discussed the necessity for additional help for the Alaska work—the timber work—that winter, and that was about all that took place there; and then in December, in Washington, when I saw him next, we discussed the general work that was going on in my division.

The CHAIRMAN. Well, now, at any of these conversations that you refer to with Mr. Dennett or with Mr. Schwartz, was any disposition manifested by them to obstruct or hinder you in carrying on these investigations?

Mr. GLAVIS. Of course, it was not discussed during the summer—

The CHAIRMAN. Answer that question, please. Did they indicate in any shape or manner that they wanted to obstruct you in carrying on these investigations?

Mr. GLAVIS. Yes, sir. Mr. Dennett told me, as I stated yesterday, that he did not think we should prosecute the coal claimants criminally, that if we canceled the claims, he thought that was sufficient.

The CHAIRMAN. That had nothing to do with the investigation; that was simply giving you an opinion; but I asked you the question, and you can answer it. Did they indicate, either of them, that they wanted to obstruct you or hinder you in carrying on this investigation in this conversation at that time?

Mr. GLAVIS. At that time?

The CHAIRMAN. At all of these conversations that you referred to?

Mr. GLAVIS. I will have to take them up separately to make myself clear.

The CHAIRMAN. I would like to have you answer that question. You can answer it by "yes" or "no," and then if it is necessary to explain, you can do that afterwards.

Mr. GLAVIS. Well, that was in the summer that we discussed the Alaska coal cases, and we discussed it in such a manner that we both understood I was not directed to resume the investigation at that time. In the winter when we saw them we did not discuss the Alaska coal cases. At the time I saw them in the winter I had been directed to resume the investigation in October—October, 1908.

The CHAIRMAN. That is your answer to my question, is it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Did you during that period, I mean the ten months from May 2, 1908, to the beginning of March, 1909, render your regular daily reports to the office, indicating the work on which you were engaged?

Mr. GLAVIS. Yes, sir; I did; also all the agents did.

Mr. BRANDEIS. I call your—

The CHAIRMAN. Now, Mr. Glavis, in that connection, in May, by the letter of the department, or of the General Land Office, you were directed to suspend the investigation in Alaska, were you not?

Mr. GLAVIS. By the telegram of May 2 I was; yes, sir.

The CHAIRMAN. And you objected to that because it would injuriously affect the investigation of the Alaska coal cases?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Well, now, from that stage when that telegram was dated, from May to October 7, when you got that letter on October 7, you admit that you had never done any work on the Alaska cases because you were kept on other work until the following March?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Now, did the Alaska cases suffer more detriment in that first period from May to October than they did in the period from October to March?

Mr. GLAVIS. Well, they did, for the reason that had we been able to continue at the time we were investigating there could not have been the chances for posting the witnesses on the other side that there would have been during that four or five months.

The CHAIRMAN. Well, would not there be the same chances for posting them from October 7 to March?

Mr. GLAVIS. Well, if they had not done it up to October I do not think they would have done it after that time.

The CHAIRMAN. So you do not think there was a danger in those four months that you didn't do anything, when you had the chance under the order to do it, that there was in the preceding period?

Mr. GLAVIS. Well, I did not really have the chance in the way that I had with this other work, but I do not think it would.

The CHAIRMAN. Well, now, what was the difference between the urgency of the work that you were called upon in May to do in Oregon and the urgency of the work that you were doing after October when you got that order—which was the most urgent class of work of the two?

Mr. GLAVIS. One could be completed at once, and the Alaska case could not be—

The CHAIRMAN. I mean on this outside work. I do not refer to the Alaska work. You were diverted by the order or the telegram of May to go into the Oregon work because of its urgency. After you got the letter of October 7 you were prevented from going into the work, you say, because you had so much other work. Now, this other work, in both cases, which was the most urgent work, that that you were transferred to in May or the work that you did between October and March?

Mr. GLAVIS. The Alaska work in May—

The CHAIRMAN. I do not refer to the Alaska work. I refer to this other outside work—not the Alaska work.

Mr. GLAVIS. I did not understand your question, Mr. Chairman.

By direction of the chairman the stenographer read as follows:

After you got the letter of October 7 you were prevented from going into the work, you said, because you had so much other work. Now, this other work, in both cases, which was the most urgent work, that that you were transferred to in May or the work that you did between October and March?

Mr. GLAVIS. Some of the work that I did in May and the work that I did between October and March was the same work, and then—

The CHAIRMAN. Is that your complete answer?

Mr. GLAVIS. No, sir. That is, some of the work that I did during both periods was on the same cases. Then when I arrived here, working on that C. A. Smith case in December, 1908—that is the case that I was transferred to in May from the coal cases—I was directed to do this special work, and I had no preference then as to which I was to do it.

The CHAIRMAN. And you were directed to do that special work, because the statute of limitations would soon run against the cases; was not that the reason?

Mr. GLAVIS. In May, you mean?

The CHAIRMAN. Yes.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. I understood you, either yesterday or the day before—either you or your counsel—to say that it was only some three or four months before the statute of limitations would have foreclosed the civil cases and that the criminal cases were already foreclosed.

Mr. GLAVIS. Yes, sir; in the civil cases.

Mr. BRANDEIS. I call your attention to the statement of Mr. Schwartz on page 230 of the record, as follows:

The office assumed, and had a right to assume, that the instructions in letter of October 8, 1908, would be carried out; also that the directions in letter of June 3, 1908, would be complied with.

Have you anything further to say with reference to that statement of Mr. Schwartz?

Mr. GLAVIS. Mr. Schwartz knew at that time of all the work I had and the force I had to do it with. He also knew that the field examinations in Alaska were necessary before I could complete those reports, and that it was natural that I would conclude the work that I could complete before taking up the other work.

Mr. BRANDEIS. The portion quoted is near the bottom of page 230.

Mr. GRAHAM. The last paragraph but one?

Mr. BRANDEIS. Yes. I wish to introduce certain papers appearing in Senate document 248, which I will not read fully but will ask be inserted in the record.

The CHAIRMAN. What is the page?

Mr. BRANDEIS. Page 622. It is the memorandum of Mr. Schwartz which should go with the letter of Mr. Rogers that I introduced in evidence as bearing upon the value of the Cunningham lands.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 23, 1908.

Memorandum.

The attached letter of M. K. Rogers, addressed to the Secretary and which Mr. Rogers has marked personal, is confined to a showing as to the grade and amount of coal in certain parts of what are known as the "Cunningham group" of coal claims in the Bering River coal fields of Alaska. If the statements of Mr. Rogers are true, the coal lands embraced in the Cunningham group have a present value of many million dollars.

Chief of Field Division Glavis, Portland, Oreg., has advised this office that he will in a few days submit adverse reports against the Cunningham group of entries. If his report warrants adverse action and there is no legislation curing the irregularities charged, I advise that one or two of our coal experts examine these lands at once, to the end that if the Cunningham group of entries are canceled for fraud the lands may at once be reserved from other disposition till such time as the Government may determine whether it is desirable to retain these coal fields for government purposes.

Respectfully,

H. H. SCHWARTZ,
Chief of the Field Service.

[Personal.]

SEATTLE, WASH., April 8, 1908.

HON. JAS. A. GARFIELD,

Secretary of the Interior, Washington, D. C.

DEAR SIR: Referring to our conversation about the Bering River coal fields, when I was in Washington a few weeks ago:

I am sending you herewith some additional information that may be of interest to you. The sketches, I think, are self-explanatory.

No. 1 is a plan and the other is a section of a vein of coal. This vein is located on Trout Creek, a branch of the Bering River, and on what is commonly known as one of the Cunningham claims. This is certainly one of the largest exposures of first-class coal to be found; certainly there is no such exposure to be found on anything tributary to the Pacific Ocean. One acre of coal, including the vein where the section is taken, I estimate as having upward of 50,000 tons of coal.

In the Monongahela Valley in Pennsylvania, where I was raised, coal lands yielding 6,000 tons of coal to the acre, with coal selling at one-half the price it would here, is worth from \$3,000 to \$5,000 per acre.

I had this opening sampled as per sketch inclosed herewith, and the analysis of ash is high in several of the samples, but this was caused on account of considerable gravel being mixed with the coal, as it was near the surface and was simply a mechanical mixture and could be easily separated from the coal by ordinary washing. I think 5 to 7 per cent ash will be a fair percentage of ash for this vein of coal.

I am also sending you in the same mail a piece of coal from a 24-foot vein on the same coal belt, about 8 miles east of this opening. I think an analysis of this coal will show it to be of a high grade of semianthracite, running perhaps 85 per cent or more in fixed carbon. Should you have this coal analyzed by the department I would be pleased to have a copy of the analysis.

I desire this communication kept private, as it is simply for your own information.

Trusting this will be of value to you, and assuring you that if there is any further information that I can give you I will be pleased to do so, I beg to remain,

Yours, truly,

M. K. ROGERS.

Mr. BRANDEIS. Then there should go into the record the correspondence on page 494, being letters from Commissioner Dennett to Mr. Glavis, dated June 3, 1908, and Glavis to Dennett, dated June 10, 1908.

(The letters are as follows:)

"P" H.H.S.

HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 4, 1908.

Mr. L. R. GLAVIS,

Chief of Field Division, Portland, Oregon.

SIR: Under date of April 20, 1908, in a letter to Chief of Field Service Schwartz, you transmitted to him a book marked "Journal" kept by Clarence Cunningham, wherein is set forth the original agreements and all subsequent alleged expenses and payments made in what is known as the Cunningham group of coal claims in Alaska.

Your letter of transmittal, together with copy of affidavits attached and the book itself, have been duly copied and compared in this office and certified copies retained.

The original book is herewith returned to you by registered mail.

Mr. Cunningham has been in this city for the past ten days, and during that time made complaint to this office as to your possession of the book marked "Journal," alleging that the same had been taken from his office surreptitiously and without his knowledge and consent, and in a manner subjecting the service to criticism for violating the fundamental rules against "unlawful searches and seizures."

The chief of the field service has advised me that, as a matter of fact, before leaving the office of Cunningham, Mr. Jones especially called the attention of

Cunningham and yourself to the fact that this book was one of the records to be taken by you for the purpose of copying, etc.

It is suggested that you and Mr. Jones submit to this office, in affidavit form, a statement showing the knowledge of Cunningham, if any he had, and his consent to your taking the book in question.

Very respectfully,
AFMcC.

(Signed) FRED DENNETT,
Commissioner.

Transmits affidavit of L. R. Glavis, in re Alaska coal claims. Ref. had to letter "P" HHS, dated June 4, '08.

Alaska 3
Glavis, L. R. (Chief F Div.)

[Department of the Interior, General Land Office, 38231.]

PORTLAND, OREGON, June 10, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: In compliance with your letter "P" HHS, dated June 4, 1908, I have the honor to transmit herewith my affidavit corroborated by Special Agent Horace Tillard Jones, which I trust fully explains the manner in which I secured possession of the book marked "Journal" relating to the Cunningham group of coal claims.

I am at a loss to understand how Mr. Cunningham could charge me with having secured possession of said book without his knowledge and consent, as it will be seen that Mr. Cunningham loaned me the book, and if he was mistaken in the records which he loaned me, he could not have been when Mr. Jones called his attention to the fact that I was taking the book marked "Journal." It is also evident that he knew I had the book, for how would it have been possible for me to ask him concerning said journal when taking his affidavit, for in his affidavit mention is made thereof.

Respectfully,
6922.

(Signed) L. R. GLAVIS,
Chief Field Division.

(The affidavit inclosed with the letter of June 10, 1908, is as follows:)

STATE OF OREGON, *County of Multnomah, ss:*

L. R. Glavis, having been first duly sworn, on oath deposes and says:

I am special agent of the General Land Office, with headquarters at Portland, Oregon; that about 9.30 a. m. on the 6th day of March, 1908, at Seattle, Washington, I called upon Clarence Cunningham, agent for a number of Alaska coal land entymen. I introduced myself to Mr. Cunningham, telling him I was a special agent of the General Land Office, and had under investigation the coal land entries made by himself and others for whom he was agent. Special Agent Horace Tillard Jones accompanied me and was present during the interview. I likewise introduced Mr. Jones to Mr. Cunningham, telling him that he was also a special agent. Mr. Cunningham stated that he was glad I was giving the matter attention and offered to assist me in every way. He stated at that time he understood complaint had been made that the Guggenheim interests was backing these coal claims. I told him I was unable to state just what the charges were, but that I had secured certain statements of expenditures alleged to have been made by him as agent for the claimants, and that if I could examine his books and check the statements therein with the circular letters of expenditures, that this would be good evidence that the Guggenheim interests were not interested. Mr. Cunningham then stated that he would be glad to allow me to examine his books and took Mr. Jones and I to his library, and there showed us a number of papers and books, and in his presence I examined the journal and ledger kept by him. I stated to Mr. Cunningham that the papers which I had desired to check with the books were down town and secured his permission to take the books in order that I might compare the same, which he willingly granted. In preparing to leave I put the "journal" book in my pocket, and Mr. Jones took the "ledger." Mr. Jones then asked what book I had and whether I desired to take both of the books. I stated that I had the "journal" and I thought it would be best to take both of them as it would probably save time. Mr. Cunningham was present and heard this conversation,

We again met Mr. Cunningham, as per appointment, at the Rainier-Grand Hotel at 4 o'clock the same afternoon, at which time I stated to him that I had not quite been able to check the information I desired from the books, but returned the "ledger" to him and asked his permission to take the "journal," together with other papers which he loaned me, to Portland, which he agreed to. I then took his affidavit concerning the coal claims, at which time we again discussed the "journal" and he mentioned the same in his affidavit, copy of which is hereto attached.

(Signed) L. R. GLAVIS.

Subscribed and sworn to before me this 11th day of June, 1908.

(Signed) JOSEPHINE A. PATTEN,
Notary Public for Oregon.

Senator SUTHERLAND. Were not those put in yesterday?

Mr. BRANDEIS. June 3, not June 4, relating to the affidavit, which I omitted to put in.

The CHAIRMAN. This is the one you put in, June 3?

Mr. BRANDEIS. June 3 was put in, but not June 4; Dennett to Glavis was not put in, neither was the letter of June 10, on page 495, and the affidavit in relation to the same which appears on pages 495 and 496 in regard to the Cunningham journal.

Then there is the letter of Dennett to the Secretary on page 282, the letter of October 24, in regard to the allowances for Alaska duty, the extra allowances for Alaska duty, which go in in connection with the other letters preceding.

Senator SUTHERLAND. Which is that letter, I do not understand that?

Mr. BRANDEIS. The letter of October 24, 1908. We put in the earlier letters, but that was omitted by inadvertence.

(The letter is as follows:)

EXHIBIT 13.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 24, 1908.

THE SECRETARY OF THE INTERIOR.

SIR: There is a large amount of field work of first magnitude pending in the district of Alaska. The bulk of the natural resources in that immense territory are still public property. There is, however, great activity on the part of private individuals and corporations to acquire coal, mineral, and other lands. The development of these lands require much timber, and large amounts of timber are being taken from the public lands. It is also apparent that valuable town and power sites are being held under mining locations.

Proper protection of the Government's interests requires a field force larger than that available under present circumstances. To meet immediate necessities, however, this office will detail four agents for Alaska duty.

Difficulty is experienced in securing good men for Alaska duty. The hardship of winter travel limits the field of selection to those of perfect physique, and the great cost of subsistence deters these men from accepting an Alaska assignment. The law limits the per diem, in lieu of subsistence, to \$3 per day. In my recommendation for appropriations for the ensuing fiscal year I have asked for \$6 per diem for Alaska men.

Chief of Field Division Glavis, of Portland, Oreg., cites a few items indicative of cost of subsistence:

The quarter dollar is the smallest change used; meals cost from \$1 to \$1.50 at ordinary stopping places and restaurants; lodging costing from \$2 to \$4 per day; that an agent must at his own expense pay out about \$200 for personal equipment, such as sleeping bag, extra clothing, etc.

In view of these facts, the salary paid agents in Alaska should be such as to compensate for the actual difference between the \$3 statutory per diem and the real cost of subsistence. An increase of \$3 per day in salary will do this.

I therefore recommend that you issue an order that the salary of such agents as may from time to time be on detail in Alaska be increased \$3 per day above the amount stated in their appointment for such time as the agent is on duty in Alaska or afloat proceeding to or returning from such Alaska duty.

Respectfully,

(Signed)

FRED DENNETT,
Commissioner.

Approved, November 5, 1908.

GARFIELD, *Secretary.*

Mr. JAMES. Well, this letter of June 4 here of Mr. Dennett, commissioner, to Mr. Glavis, uses this language: "The original book is herewith returned to you by registered mail"—speaking of the Clarence Cunningham book. Did you send him the original book which you got from Cunningham?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Was that the journal which was placed in evidence yesterday?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. And that was what he registered back to you?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. So you did not keep it yourself and send him a copy?

Mr. GLAVIS. Well, I made a copy, too, and in my letter of transmittal I asked them to make a certified copy of it, and they also made a certified copy of it before they returned it to me.

The CHAIRMAN. And what did you do with it then?

Mr. GLAVIS. Then I returned it to Cunningham.

Senator FLETCHER. Do you know whether that book was in the handwriting of Cunningham?

Mr. GLAVIS. Yes, sir; he told me it was.

Mr. JAMES. I see this letter also says:

Mr. Cunningham has been in this city for the past ten days, and during that time made complaint to the office as to your possession of the book marked "Journal," alleging that the same had been taken from his office surreptitiously and without his knowledge and consent, and in a manner subjecting the service to criticism for violating the fundamental rules against "unlawful searches and seizures."

How did you get hold of that book?

Mr. GLAVIS. Well, I explained that fully in the affidavit that I made, and that Mr. Jones made also.

Mr. JAMES. That was placed in the record yesterday.

Mr. GLAVIS. It is in the record now.

Mr. COTTON. It is page 495.

Senator FLETCHER. You say now, Mr. Glavis, that the statements in that affidavit with reference to that book are true?

Mr. GLAVIS. Yes, sir; Mr. Jones, special agent, also corroborated those statements.

The CHAIRMAN. Did you mean that Jones was with you when you got the journal?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I call attention to the act of March 3, 1909, making an appropriation of a million dollars, of which \$750,000 was for the purpose of bringing current deferred work to the General Land Office.

The CHAIRMAN. What page?

Mr. BRANDEIS. That appears on page 231, in Mr. Schwartz's statement. It is there referred to.

I will also call attention to and introduce the letter of Mr. Schwartz to the chiefs of divisions of March 16, 1909, which appears on the same page 231, with regard to conducting their work with a view to—

The CHAIRMAN. That is addressed to all divisions?

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. A general rule?

Mr. BRANDEIS. Yes, sir.

(The letter is as follows:)

MARCH 16, 1909.

Chiefs of Field Divisions, General Land Office:

By telegram of March 5 you were directed to place in a new series all cases arising March 4, 1909, or thereafter. To distinguish these cases from present numbers, and at the same time retain the present filing and record system, it was required to use the letter "x" as a prefix to the new numbers.

The objects in view are several: Pending cases, including old snags, will all be closed out during the coming fiscal year—so far as departmental action is concerned, in purely departmental cases; and so far as any action by the department is concerned, prior to reference to Department of Justice in cases requiring action in the department. The men necessary for this work will be supplied. Each chief, within his jurisdiction, and the Chief of the Special Service Division in the General Land Office (or other office chief having jurisdiction) will be held directly and personally responsible for the steady and expeditious clearing of the pending dockets.

In this connection your attention is called to an attached extract of the confidential explanation of a letter signed by me and used by the Secretary as a basis for the request of the present appropriation for \$1,000,000 for this service. This extract covers some of the more important pending cases in your present territory. The commissioner and myself, at the hearings before the House Committee on Appropriations, gave personal assurance that the General Land Office would appear before that committee one year hence—when hearings on the field appropriation are held—and explain progress then being made in these cases. You are particularly charged to push these cases vigorously—completing your own work and urging prompt action by the United States attorney where he is in, or comes in, these matters. From time to time, as these particular cases reach conclusion, you will speedily report results, identifying the case with the item in my letter asking for the appropriation.

You will also be supplied with sufficient men to keep current the new work. It is required that it be kept current and that no case be allowed to lag either because of inherent difficulties or by reason of its geographical isolation.

Your attention, and that of all of your agents, is particularly addressed to the paragraph on page 2 of form 4-480, entitled "to new agents."

In addition to the regular monthly report, which will be made as now, you will, each month, submit on a monthly work sheet a statement showing condition of cases which were pending in your office at the close of business March 3, 1909.

Very respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

Mr. BRANDEIS. I also introduce in evidence the report of Assistant Secretary Pierce, transmitting the report of the hearing of the Alaska coal claimants, which appears on pages 189 to 203, and which shows the hearing which took place on March 9, 1909.

(The letter and report are as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF FIRST ASSISTANT SECRETARY,
Washington, March 12, 1909.

MY DEAR MR. SECRETARY: At your request I gave the representatives of the Alaska coal interests a hearing upon the coal situation in Alaska and herewith hand you typewritten manuscript of the hearing. Mr. Falcon Joslin, of Fairbanks, Alaska, made the principal statement. He is one of the members of a committee recently appointed by the American Mining Congress to present the

coal situation in Alaska to the Interior Department. After making his statement he presented three requests for consideration:

Request No. 1.—That all applications for patents upon locations made before November 12, 1906 (this is the date of the President's withdrawal), be investigated and speedy action taken thereon.

Request No. 2.—That the act of 1908 be amended so as to increase the combination unit from 2,560 to 5,120 acres, and by changing section 3 thereof so as to make the offense of combination in restraint of trade a penal offense rather than forfeiture of title as provided in said act.

Request No. 3.—That the order of November 12, 1906, withdrawing all coal lands from entry in Alaska, be abrogated, and the coal lands be opened to location and entry.

Remarks on request No. 1.—You have already directed that applications for patent to coal claims located prior to November 12, 1906, be speedily investigated and patents issued where no fraud is discovered. So request No. 1 need receive no further attention from you at the present time.

Remarks on request No. 2.—The modification of the act of 1908 does not need your immediate attention, inasmuch as Congress is not likely to consider new legislation before December next.

Remarks on request No. 3.—On November 12, 1906, all coal lands in Alaska were withdrawn from location and entry by direction of the President. (Exhibit A, p. 26.) This withdrawal probably had two purposes in view: First, conservation of the resources of the country, and, second, securing legislation. It could not have contemplated classification of the coal lands according to values, because the coal act of Alaska provides for entry of Alaskan coal lands at a flat rate of \$10 per acre. (33 Stat., 525; see circular attached.) The general coal act for the other States and Territories provides for the sale of coal lands at "not less than \$10 per acre for such lands where the same shall be situated more than 15 miles from any completed railroad, and not less than \$20 per acre for such lands as shall be within 15 miles of such road." (Sec. 2347, R. S.; see circular attached.) It has been held by the Interior Department that coal lands can be classified according to value under this section. Such a construction, however, can not be applied to the Alaska act, because in that act provision is made for the sale of the coal lands at a flat rate, as stated.

I especially call your attention to the statement made that on account of the withdrawal and suspension of entries the coal consumers in Alaska are compelled to import coal and pay something like \$15 a ton, while it could be produced in Alaska and sold for \$6 or \$7 per ton if it were not for the withdrawal.

Please note also the statement that the withdrawal retards the building of railroads for two reasons: First, because fuel has to be imported for use of the railroads; second, the withdrawal prevents the development of the coal mines, and therefore the mines furnish no freight to the railroads.

I am informed that Alaska has a population of probably 50,000 whites and 30,000 Indians, distributed substantially as follows: In the Fairbanks district about 15,000, the center of which is Fairbanks, with about 4,000. The second largest district is Nome, with a population of about 9,000; Nome has about 3,000. The next largest district is southeastern Alaska, extending from Ketchikan to Skagway, with a population of about 15,000; the principal towns in this area are Ketchikan, having about 1,500 population, Juneau about 2,500, Douglas about 1,500, and Skagway about 1,500. There is also a population of about 7,000 in and around Cordova, Valdez, and Seward; also about 1,500 around Kodiak. The rest of the population of Alaska is scattered.

I have attached to the report the following exhibits:

- (A) Withdrawal order of November 12, 1906.
- (B) Report of the Director of the Geological Survey of November 3, 1906.
- (C) The bill proposed by the committee.
- (D) The Alaska coal-land law and printed regulations thereunder.
- (E) Map of Alaska.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

HEARING IN RE COAL SITUATION IN ALASKA.

WASHINGTON, D. C., *March 9, 1909.*

MORNING SESSION.

On the 9th day of March, 1909, at request of the Secretary, a hearing was held upon the coal situation in Alaska, at which hearing there were present the First Assistant Secretary; Mr. Barclay, of the law force; Mr. Finney, of the General Land Office; Mr. Falcon Joslin, of Fairbanks, Alaska, one of the members of a committee from the American Mining Congress, appointed for the purpose of presenting the coal situation in Alaska to the Interior Department; Judge James Wickersham, delegate from Fairbanks, Alaska, and ex-Delegate Thomas Cate, of Fairbanks, Alaska.

Mr. JOSLIN. At a meeting of the committee of the American Mining Congress, held in Seattle in February last, about 20 parties appeared who had or represented coal locations in Alaska, and a very long and careful discussion was held over the subject. It was there declared by all parties interested at that meeting that the coal-land laws, as they now apply to Alaska, simply block the coal lands from development, and that in all localities coal is needed and the coal lands are required, but by reason of the provision of the law the lands can not be developed.

Mr. PIERCE (First Assistant Secretary). Tell us exactly what you mean by being "blocked."

Mr. JOSLIN. Perhaps a brief history of the laws that relate to Alaska might come in here. In 1900, the coal-land law, which had been the law in the States for a great many years, contained in four or five sections of the Revised Statutes—sections 2347 to 2352—was extended to Alaska. That proved ineffectual because the laws, as provided in the Revised Statutes, permitted the entry of surveyed lands only, and there were no public surveys in Alaska. Then, in order to remedy that defect, in April, 1904, another act relating to coal lands, in Alaska especially, was passed by Congress. That act permitted the location of unsurveyed coal lands by taking possession and marking the boundaries, and it modified the coal-land laws as contained in the sections of the Revised Statutes so as to permit the Alaska coal lands to be located. Under that act of 1904 a large amount of coal lands had been located, and a very large amount of money has been expended in perfecting those entries. I have not had time to get the statistics, but am under the impression that under that act some 30,000 acres of coal land were located in what is known as the Behring River coal field; about 10,000 acres were located in what is known as the Matanuska coal field, and perhaps 2,000 acres located in the Fairbanks district. There were probably some locations at Cape Lisburn and other fields, but I don't know of them. Probably 15,000 acres of coal lands, approximately, were located under the act of 1904; the boundaries were located, notices filed, surveys made by deputy surveyors as provided by the act, and in many cases the purchase price of \$10 an acre was paid and receipts issued. No patents whatever had been issued.

Mr. PIERCE. Mr. Finney, why hadn't the patents been issued?

Mr. FINNEY. Because the entries were being investigated to determine whether or not they were fraudulent.

Mr. JOSLIN. Those entries were all in 160-acre sections or tracts. The language of the act of 1904 follows the language of the Revised Statutes, that no entries shall be made except for the individual benefit of the locator, and not, directly or indirectly, in behalf of any other person or company. I believe it is the rule in such a location, if it is made with the intention in the breast of the locator to afterwards sell it to somebody else or to some company, that would invalidate the location for fraud.

Mr. PIERCE. These entries were suspended on the charge of fraud?

Mr. FINNEY. These thirty-odd; yes.

Mr. PIERCE. Mr. Finney, how long ago was that—the suspension?

Mr. FINNEY. It was in the latter part of 1906, I think, or the early part of 1907.

Mr. PIERCE. Why have they not been cleared?

Mr. FINNEY. For two reasons. They have been under investigation by the field force of the Land Office, and, of course, in Alaska it takes some time to investigate and report. Second, we thought possibly these people might desire to come in under the act passed a year ago (act of May 28, 1908). The attor-

neys here in Washington rather insisted at the time we were drawing the regulations under the last act that they be given an opportunity to consider the matter and determine whether they would try to come in under the provisions of the last act or would take their chances under the original act of 1904.

MR. JOSLIN. There are no railroads to any coal field in Alaska, and consequently none of this coal land is contiguous to transportation, and therefore the cost and expenses of making it available involve the construction of railroads into those districts.

MR. PIERCE. Tell me about how far distant these fields are from the railroads—their respective distance.

MR. JOSLIN. The Bering River field would require about 80 miles of track to the nearest available port; the Matanuska field, 188 miles; the Fairbanks field, about 80 miles to reach the market. The Cape Lisburn and other fields I don't know about; those are probably at or near tidewater but on the Arctic coast and ice-bound ports.

MR. PIERCE. Are railroads in contemplation to these respective fields?

MR. JOSLIN. To the Bering River and Matanuska fields railroads are under construction. To the Matanuska 52 miles are constructed, leaving 136 miles to be built. The Copper River and Northwestern Railroad is building a road to extend toward the interior about 200 miles and the contracts are let for this construction; 50 miles are completed. This passes within 30 miles of the Bering River field and the company has made the surveys for a spur to the coal and is ready to build it at once as soon as the coal-land titles can be procured.

MR. PIERCE. Before we proceed further, please tell us the character of the coal in the respective fields.

MR. JOSLIN. The Bering River or Katalla field is a high-grade bituminous coal, with a considerable amount of anthracite of the finest quality. The coals in the Matanuska field are of the same character. They contain both soft and hard coals, bituminous and anthracite; those two fields contain coals of equal quality with the best coal of Pennsylvania or Wales—steam and coking and hard coals. Each of those fields contains all the classes of coal, ranging from the finest quality to the ordinary soft coal. The Fairbanks field, or Tanana field, is supposed to be soft coal; it is very little explored as yet. I think the Cape Lisburn coal is bituminous, a good quality of coal, but it has been very slightly explored. Really, the only fields that are now actively desired to be developed are the Matanuska and the Behring fields—those are high-grade bituminous and anthracite coals—and the Fairbanks field in the interior, which is soft coal.

MR. PIERCE. Mr. Joslin, give us all the information that you can on those points. We will give you the manuscript and let you correct it up and add to it.

MR. CALE. Perhaps if I ask a question it might lead Mr. Joslin to give any information. How far is it from the Katalla fields to tide water?

MR. JOSLIN. Directly, not over 20 miles; but at that point on the coast they have spent a great deal of money attempting to make a harbor, but have failed and given it up after expending about \$2,000,000.

MR. PIERCE. Who spent it?

MR. JOSLIN. Two or three different parties.

MR. CALE. In naming the railroads that are now under construction headed toward the coal fields, do you include the Alaska Central?

MR. JOSLIN. Yes; that is the Matanuska field. It lays 188 miles from the nearest available port. The Alaska Central Railroad has constructed 52 miles of this distance and plans to finish as quickly as the money can be obtained. The condition of coal-land titles at present is a very serious obstacle to getting the additional capital.

MR. PIERCE. Are the people of Alaska getting coal for their consumption out of these respective mines?

MR. JOSLIN. No.

MR. PIERCE. Where do they get it?

MR. JOSLIN. They import it from the State of Washington and from British Columbia. In the interior they use wood at a cost of from \$8 to \$15 a cord.

MR. PIERCE. Is that the general price throughout Alaska for wood?

MR. JOSLIN. Throughout the interior of Alaska; yes.

MR. PIERCE. The reason they don't use this coal is because it isn't available?

MR. JOSLIN. Yes; there are no roads to it.

MR. PIERCE. If the coal was available for market, would the railroads be built in to it, do you think?

Mr. JOSLIN. Yes; to two fields roads have already been started. In one case construction to the coal fields is stopped only because of the difficulty of title to the coal lands. The road to the other field is stopped and in the hands of a receiver and now in process of reorganization. The trouble in getting title to coal lands makes it difficult to get fresh capital to carry out the reorganization and provide for completing the road.

Mr. PIERCE. You want the law and regulations so framed that these coal fields may be opened and the coal made available for use?

Mr. JOSLIN. Yes; and it is greatly needed in Alaska.

Mr. CALE. Do you consider that the coal fields can not be opened up under the present law?

Mr. JOSLIN. Decidedly; exactly; that is why I am here; they can not—

Mr. PIERCE. Just give us as full information as you can.

Mr. JOSLIN (continuing). Because no satisfactory title can be procured to the coal lands.

Mr. PIERCE. I supposed that you would take that subject up separately after you had given us a general résumé of the situation. I would like to find out here how extensive are those coal measures.

Mr. JOSLIN. They are very extensive. The Matanuska and Bering River fields are probably larger than the Pennsylvania fields—I won't say twice as large, but they are much larger in the aggregate than the coal fields of Pennsylvania. The coal field in the Tanana Valley is probably larger than any other coal field in the United States, both in area and in thickness; indeed, I am inclined to believe that the coal field in Tanana Valley is the largest coal field in the world, unless there may be some in China that are greater. The coal in the Tanana has a vertical thickness, as reported by the Geological Survey, of over 200 feet of workable coal.

Mr. PIERCE. How many of these districts contain lignite coal?

Mr. JOSLIN. This one that I have spoken of in Tanana; it is a good quality of lignite.

Mr. PIERCE. Just what is lignite coal—the distinction from other coals?

Mr. JOSLIN. The chief difference is in the amount of fixed carbon. Lignite coals range from 30 to 50 per cent of fixed carbon; bituminous coal ranges from 50 to 70 per cent of fixed carbon; while anthracite coals range from 70 to 90 per cent of fixed carbon.

As I say, some 30,000 or 40,000 acres—I don't know exactly how many—were located under the act of 1904. Supplies and tools to prospect the locations were packed on men's backs and on pack horses all the way from 20 to 180 miles. It is a difficult country. Trails were cut through the wilderness and cabins built. Deputy mineral surveyors were employed, who surveyed the claims at heavy expense—so much so that I understand that the average cost of development and survey of a single tract of 160 acres amounts to approximately \$5,000. In the Matanuska field probably \$300,000 or \$400,000 have been spent on coal development and over \$4,000,000 on the railroad. In the Katalla field probably \$2,000,000 have been spent in coal development, including the money various companies have spent in endeavoring to get a suitable harbor for that coal. Several million dollars have been spent on railroads intended to reach this field. Then, on November 12, 1906, while this development was proceeding under the act of 1904, when the titles were being perfected under that act, the order of the Secretary was issued, withdrawing all coal lands in Alaska from entry. (Copy of the order of November 12, 1906, is annexed hereto as Exhibit "A.") The reason and occasion for issuing that order I have not been able to find.

(Reads letter from the Director of the Geological Survey to the Secretary of the Interior, dated November 3, 1906. Copy annexed hereto as Exhibit "B.")

The report of the Director of the Survey recommending the withdrawal of coal lands in Alaska, dated November 3, 1906, does not specify the reasons for such withdrawal, except by reference to similar recommendations for withdrawing coal lands in the Western States and Territories. We are still out of touch with the true reasons.

(Secretary reads the order.)

Mr. JOSLIN. Of course, I have been expecting to find the real philosophy, the real reasons, for the order; but I have never known precisely why the coal lands of Alaska were withdrawn. I supposed it was under the general conservation idea of preserving the resources of the nation for future generations. To a man in Alaska who has endeavored to develop the coal there, it seems extremely difficult to understand the reasons; where the coal is so much needed, where it is a pioneer country and the development of the Territory is very

largely blocked by the withdrawal, whatever reasons there are ought to be very cogent reasons. If the withdrawal was for the purpose of classifying the coal lands and fixing the price at higher than the minimum price, it would not apply to Alaska at all, because the minimum price in Alaska is fixed at \$10 per acre, flat, by the act of 1904. (See sec. 2 of the act of April 28, 1904, 33 Stat., 525.) The old law as contained in the Revised Statutes fixed the price at not less than \$10 and \$20 per acre.

If the other reason suggested is correct, that the withdrawal was made for the purpose of investigating the validity of the entries already offered, then it would be confined and should be confined to the entries to which the investigations pertain and not affect the vast area of unapplied-for lands. If it is based upon a general purpose for the conservation of resources for future generations, then I think some consideration should be paid to the present generation. I do not know the philosophy of the order at all, except the suggestions just made. If it is made for conserving resources for future generations, it will block the progress of the Territory, and the future generations will not arrive, because you can't get them there.

Mr. CALE. I would like to ask Mr. Finney a question which might assist Mr. Joslin in his explanation. Is it not true also that there was a question which entered largely into the withdrawal of the Alaska coal lands, which was that there were a great many locations made up there, and it was not only a question as to whether they were legally made or not, but that the interests of various claim owners were so lapping over one another as to give rise to a large number of disputes as to ownership—that that was one of the reasons why the department here caused the order to be issued?

Mr. FINNEY. I don't think that furnished any sufficient reason, for the reason that the act of 1904 provides for an adverse proceeding between conflicting owners, similar to the general mining laws, and they could leave their respective interests to the courts.

Mr. PIERCE. Mr. Joslin, are the laws as they now stand sufficient for your relief, provided the withdrawal is set aside?

Mr. JOSLIN. No.

Well, the order of withdrawal of November 12, 1906, had the effect of stopping all new entries, and in some manner caused the proceedings to perfect patents to the entries that had theretofore been made to be held up, so that although there was a large amount of claims applied for, none of them have obtained their patents. A large number of them have paid the \$10 per acre. Patents have not yet been issued. Then the coal claimants, thus having their titles suspended, sought an act of Congress with a view to enabling these claims to be perfected. Congress passed the act of May 23, 1903, which has proved entirely futile to accomplish the purpose. That act refers only to locations made prior to November 12, 1906, and permits the grouping or union of 2,560 acres, or what would be sixteen 160-acre tracts, and provides that they may be patented as one tract. To this extent the act was satisfactory, except that the coal claimants desired a larger unit than 2,560 acres. But the third section of the act declared that there should be no combinations of the groups which would be in restraint of trade and provided that if there was any such combination it should act as a forfeiture of the title, and it was provided that this clause should be written in the patent. This forfeiture clause completely destroyed any value of the act. A title with a forfeiture clause in it would be valueless, and no claimants have applied to group their locations under that act. Under the coal laws as contained in the Revised Statutes, and always until the act of 1903, in the public-land States coal lands could be obtained only in 160-acre tracts. The law not only limited the right to acquire coal land by original location to 160 acres, but it endeavored to go further and prohibit the acquiring by purchase after location of a greater quantity than 160 acres.

This intention could be only partially enforced because after patent issued a purchaser might acquire as many 160-acre tracts as desired. The right of alienation of title is in coal land, as in all other lands, the principal element of its value.

But the department, carrying out the spirit of the law, prohibited the sale or purchase of a coal entry before patent. And if it was found that any locator had agreed beforehand to sell his location or had made it in behalf of any other person who was to supply the money to pay the Government, then the location would be invalid. This is called a "fraudulent entry." The language of the "application for patent" under the act of 1904 is as follows: The applicant must swear that "I am now in the actual possession of said mines, and

make the entry in good faith, for my own benefit, and not directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever."

Mr. PIERCE. I don't quite catch your point and reasoning, Mr. Joslin.

Mr. JOSLIN. I will explain. As a matter of fact, few, if any, would care to locate a coal claim if he had not the right to sell it some time; but he must not agree to sell it before he gets it. A unit of 160 acres of coal land is wholly insufficient to justify the expenditure of the capital necessary to open a coal mine. It is physically and financially impossible to open a coal mine on 160 acres of coal in a new country where there are no railroads, because the opening of a coal mine and the building of railroads to it in any of these localities in Alaska will cost a large sum of money, say, from \$1,000,000 to \$5,000,000; and no single owner of 160 acres could possibly expend that amount of money for the coal contained in a 160-acre tract.

Mr. PIERCE. Well, do you think the act of May 28, 1908, should be amended, or should stand as it is?

Mr. JOSLIN. I am speaking the sense of the locators themselves, and they declare that the unit of acres expressed in the act of 1908 is too small; that 5,000 acres is as small a unit of coal land as you can afford to spend this huge sum of money on which is necessary to open the mines and make them successful.

From the fact that the 160-acre unit was too small to develop the coal lands, it resulted of necessity that any parties seeking to enter that land had to consider the possibility of getting a larger tract to justify their expenditures; so that in some cases—I know a man, his wife, his brother, his brother's wife, and probably a dozen members of his family have made these coal entries, being careful in each case that the individual in whose name the entry was made personally supplied the money to pay the \$10 per acre, and the other expense of developing; endeavoring in that way to keep within the letter of the law, whether they were within the spirit of it or not. Unquestionably, the intention in their minds was that after they got their patents to transfer those claims to a single ownership, corporate or individual, and thereby aggregate a sufficient acreage to justify the expenditure for development. So far as I know, there has been no secret of that intention—there could not be, because nobody could possibly go in there and develop those claims with 160 acres. As I said, some of the parties have attempted to attain their purpose by using their relatives and members of their families. Other parties, some of whom I know very well, and they are men of fine character and would scorn to do anything in the way of fraud, and are exceedingly careful not to get into the position of being charged with criminal action in acquiring government lands, have frankly stated that it is their ultimate intention to work those claims in groups. They can not be worked otherwise. They have stated frankly, and set it down in writing, as I understand. They have been careful to keep the letter of the law, in that the separate applicants pay their separate money for these 160-acre locations; but it is undoubtedly within their minds and intention, when the titles are perfected and they can do so, to work them together. They have made no secret of that purpose; and if that is a violation of the law, then that law will prevent the development of the lands because they can not be developed in 160-acre units. The act of 1908 was designed to correct that difficulty, and relieve them from any possible fraud by reason of this ultimate intention to work them together. That act is a permissive act, and permits sixteen of those 160-acre locations to be united and embraced in one entry and one patent, and would be satisfactory, except for the third and fourth sections of the act, and except, further, that 2,560 acres is not large enough, in their judgment, to justify the expenditure for plant and equipment to open a mine.

Now, then, section 3 of the act provides that if there is any combination in restraint of trade, any selling of the coal by a joint understanding, or anything in the nature of a trust, that it shall not be a criminal offense, but shall result in a forfeiture of the title to the land, and that section must be written in the patent. Now, that stops them entirely from issuing bonds. Money to develop the coal lands, build docks, hoisting plants, etc., is raised by making a bond issue. That is the usual way, making issue of bonds secured by mortgage upon the coal lands. They can not issue any bond and sell it, because the mortgage or the bond holder in that case would say: "If we lend you money on that kind of title, some time you may commit the offense denounced by that section, and then our title would be forfeited to the Government, and our bonds and mortgages be invalidated;" and it blocks them absolutely from getting capital on that kind of security.

Mr. PIERCE. The only objection, Mr. Joslin, that you bring to that act of May 28, 1908—

Mr. JOSLIN. Is the forfeiture clause.

Mr. PIERCE. As contained in the third and fourth sections. Otherwise, you think the act is a good one?

Mr. JOSLIN. Otherwise, I think the act is good. It might be a larger unit than 2,560 acres.

At the meeting to which I have referred, and after discussion, they drew up a proposed bill, a copy of which I hand you. (Copy annexed hereto as "Exhibit C.")

The principal point in this bill is the proposal to modify the act of 1908 by increasing the unit from 2,560 acres to 5,120 acres—double the amount—and amending section 3 by declaring it to be a misdemeanor and subject to fine and punishment (following the language of the Sherman antitrust law), in place of the forfeiture clause of section 3 of the act of 1908. There was a proviso in section 1 of the bill which was not unanimously agreed to, but it was carried by the majority. That proviso is aimed at this: Some of these groups of entrymen have 5,000 acres or more which they hope to patent in a single claim, and therefore want the unit raised to cover their claims. Others of the entrymen have all the way from 160 acres to 2,000 or 3,000 acres, or something less than 5,000 acres; and their object was in that proviso that where they had less than 5,000 acres of contiguous lands, that they should be enabled to make up the 5,000 from noncontiguous locations, provided they did not lie farther than 20 miles away from each other. That, as I said, was not unanimous, but was carried by the majority.

Mr. PIERCE. Do you want the Department of the Interior to recommend the passage of this bill?

Mr. JOSLIN. Yes; that is what we want, the department to recommend the passage of the bill. Personally, I was one who did not believe that proviso should go in there.

Mr. PIERCE. That proviso to section 1?

Mr. JOSLIN. That proviso to section 1. Both provisos to section 1 should go out, in my opinion. I was of the minority, however, in that matter. I may add, also, that I have no interest in any coal location anywhere.

Mr. PIERCE. Mr. Joslin, in what capacity do you appear before the Department of the Interior?

Mr. JOSLIN. As a member of the committee of the American Mining Congress.

Mr. CLEMENTS. Of course this bill does give a further privilege in the first proviso, namely, the right to locate such other land as, with that previously located, will bring it up to 5,000 acres. Now, were it not for the following proviso there might be some question as to where that should be located; but the second proviso removes any question by limiting the second location to a radius of 20 miles from the original location.

Mr. JOSLIN. Some of those locators, if the bill is offered without that proviso, will contest it before the committees of Congress, and the meeting adopted it largely in the hope of getting harmony, so that there would be no fight on the bill before the committee of Congress when it came up for hearing.

Mr. CALE. Was the committee unanimous as to the 5,000 acres?

Mr. JOSLIN. Yes; they were unanimous.

Mr. CALE. The reason I ask that question is that on the passage of the law of 1908 it seemed to be the consensus of opinion that claims could be profitably operated with the 2,560-acre limit.

AFTERNOON SESSION.

At the afternoon session also appeared: Mr. John E. Ballaine, of Seattle, Wash., and Mr. Clements, of the Assistant Attorney-General's office.

Mr. JOSLIN. That is one of the matters for consideration as to what the unit of the coal locations, or rather the unit of the groups (for the location unit will remain 160 acres), should be, and it is purely an arbitrary unit and must be. It is certain that 160 acres is too small a unit to develop. A unit of 5,000 acres is what the meeting favored. They ought to know; they are doing the work and spending the money. What it ought to be is purely arbitrary. Congress in the act of 1908 fixed it at 2,560; the coal locators themselves want it 5,120 acres. I suppose it will probably be determined by what the department recommends.

Now, then, the proposition is divided really into two parts: One is—the act of 1908 relates to that only—those claims which were located previous to

November 12, 1906. The first question that presented itself to me when it was suggested was, why, if the act of 1904, which was an invitation by the Government to go there and locate those claims and they did so and located them validly, why they should not have their patents?

Mr. PIERCE. Now, Mr. Joslin, I want you to state to us just what you, as representing the committee, want done, so that the particular relief which is required can be called to the attention of the proper authorities.

Mr. JOSLIN. This is the relief desired: First. That in so far as existing locations are concerned, all of which were instituted prior to November 12, 1906, the locators desire those claims investigated and patents issued, where the locations are found to be valid, not under the act of 1908, but patented as 160-acre locations under the act of 1904.

Second. A modification of the act of 1908 by the passage of the bill I have presented (Exhibit C), increasing the number of acres that may be grouped to 5,120, and changing section 3 of the act of 1908 so as to make the offense of combinations in restraint of trade penal offenses rather than forfeitures of title.

Third. That the order of November 12, 1906, withdrawing all coal lands from entry in Alaska, should be abrogated and the lands opened for location and entry.

I might add this, in conclusion, that the first effort to open the coal lands in Alaska was made in 1900. Now nearly nine years have elapsed and no entry has been perfected. Twice since that date the law has been amended, aiming to permit the perfection of titles but failing of its purpose. We are now in this condition: That we are importing coals to the extent of probably a million of dollars a year into Alaska and have unlimited coal fields which we can not get at.

Mr. PIERCE. Mr. Cale, I want to ask a question of you. Why was the area fixed at 2,560 acres?

Mr. CALE. The only reason, as I understand it, was this: It was generally conceded by all that a separate claim of 160 acres could not be profitably worked. Then the discussion resolved itself to this: How much or how many acres would be necessary to make it profitable? So it seemed to be the consensus of opinion that 2,560 acres was sufficient to open up, develop the property, and work upon a commercial or profitable basis.

Mr. PIERCE. Was that about the number that could be handled with one system of workings?

Mr. CALE. Yes; in order to install the proper machinery necessary to develop a mine, that it would require 2,560 acres.

Mr. PIERCE. From one set of workings and one set of machinery?

Mr. CALE. Yes.

Mr. PIERCE. Could additional acreage be added and development proceed through the same set of machinery and the same workings?

Mr. CALE. Yes; it could be; but the object of limiting it to 2,560 acres was to prevent a monopoly of the coal business in Alaska, and they did not think proper under the law to permit any more to be added to that group; it was simply to head off monopoly—to encourage as many independent companies as possible—and they thought that the coal fields could be better developed under a system of that kind, under a law of that character.

Mr. PIERCE. Is there any more that you wish to add?

Mr. CALE. No.

I might ask a question of Mr. Joslin that might be of benefit in relation to the importation of coal into Alaska.

It might be well for the committee to know just exactly in what parts of Alaska coal at the present time is being imported.

Mr. JOSLIN. I can answer that roughly; 50,000 tons a year, in rough, are imported to Nome. The Treadwell mine takes about 50,000 tons a year; that is near Juneau. The steamers that ply to and from Alaska use probably fifty to one hundred thousand tons per year, all of which they have to bring up the coast and carry back with them. There are numerous other smelters, so that I should say the annual importations to Alaska would exceed 150,000 tons of coal.

Mr. CALE. Another question: Is it, or is it not, a fact that the coal used by the steamers plying between Seattle and other shipping ports into Nome and other parts of Alaska is of the most inferior quality?

Mr. JOSLIN. It is mostly of the soft, poor-quality coal, and costs from \$9 to \$15 a ton when it reaches Alaska.

Mr. CALE. What would be a reasonable price for the Alaskan coal at tide water, assuming railroad facilities?

Mr. JOSLIN. It costs \$2 a ton to mine it; probably \$2 a ton to transport it to tidewater—say, \$4; then the profit; the coal should be sold where the railroads enter these districts in the Alaskan ports of Cordova and Seward at \$6 to \$7 per ton—not to exceed those prices.

Mr. PIERCE. What is now paid in Nome for the coal of the same character as the Alaskan coal, which you say should be sold for \$6 to \$7 a ton?

Mr. JOSLIN. The coal they pay \$15 a ton for at Nome is a soft coal from Washington and British Columbia, and is far below, in fuel value, the Alaskan coals of these two fields.

Mr. PIERCE. Then the situation you have described really compels the consumer to pay an additional amount of about \$9 or \$10 a ton?

Mr. JOSLIN. Yes; considering the inferior quality of coal.

Mr. PIERCE. I wish you would state a little bit more fully, Mr. Joslin, the fuel generally used in the towns of Alaska and its source and cost.

Mr. JOSLIN. There are two absolutely distinct zones in Alaska. Along the coast all the coast towns, which embraces the towns from Ketchikan to Cape Nome, use this soft coal, which is chiefly brought from British Columbia ports, on which duty is paid, and which, as I say, costs from about \$9 a ton at Ketchikan to \$15 a ton at Nome. All towns in the interior of Alaska use wood fuel at a cost of \$8 to \$15 per cord, which in the coal equivalent would be from \$16 to \$30 a ton. The steamboats on the Yukon River which ply to the interior use wood fuel chiefly; some import fuel oil from California. The greater part is wood fuel. Perhaps I had better tell you what my own experience is. I operate 45 miles of railroad in the interior of Alaska, and we use wood fuel, which costs us \$9 per cord piled along the track. That price will increase rapidly as the wood nearest the track becomes depleted. The stream valleys near mines—some of them—are entirely denuded of timber now within reasonable hauling distance, and within a short time the wood within hauling distance of the railroad will be depleted. Then we will be obliged to have coal or some other way of operating trains. We also pay on the wood there 50 cents a cord stumpage dues to the Government.

Mr. CLEMENTS. I do not yet understand wherein there is a necessity to increase the amount that may be conveniently worked from 2,560 acres to 5,120 acres. I thought I understood this morning from what you said that it contemplated an independent tramway, or something of the sort, for the purpose of convenient operation; but this afternoon you tell me that you are not interested in coal mining; that you only build railroads that go into the centers, and that your interest is for the purpose of getting freight, coal, to carry; and that seemed to me to take out, in a measure, the independent operation, except for such small family arrangement, that would eventually cooperate with your system when constructed.

Mr. JOSLIN. Well, I am not building any road to any coal. I have considered it. I have considered building 70 miles of road from Fairbanks to a coal field near there, with a view to getting coal for our own use and for the market, and as soon as we begin to consider that the first thing that we begin to inquire is whether you can get title to the coal land and whether you can get title to sufficient of it.

Mr. PIERCE. Mr. Joslin appears as the representative of the miners' organization—the American Mining Congress.

Mr. BALLAINE. I think I can answer that question, if you will permit. I can give you the exact information that you seek. Anybody who has money to invest—yourself, or any of these gentlemen, or anybody in New York, or Chicago, or Pittsburg—first considers how much he is going to get in interest per annum. He next considers when he is going to get his principal back. A man who invests in railroads, or in coal, does the same. Now, in investing in coal lands, the basis of computation is that the amount of machinery required to produce coal is equivalent to \$1 per ton per annum of coal produced; that is to say, if there is an output of a million tons per year in the Matanuska district, or in the Bering River district, or in any other district, the amount of machinery required to be installed for the production of that 1,000,000 tons is generally figured on the basis of cost of a million dollars; that is, the machinery alone for mining. In addition to that, they would require an investment of 50 cents per ton for bunkers. That is the basis, which would mean an investment of a half a million dollars at the ocean terminus. There is \$1,500,000 invested to start with before a pound of coal is produced. Second, is your fleet of colliers, which you must have to supply Seattle, Portland, San Francisco, Los Angeles, the Hawaiian Islands, the Philippines, and Japan, which would probably run into \$2,000,000 or \$3,000,000. So to produce a

million tons of coal a year would require an initial investment to start with of not less than \$3,000,000, you see.

Mr. PIERCE. Mr. Ballaine—

Mr. BALLAINE. I have not finished yet. Twenty-five hundred and sixty acres will yield, at what is commonly known as a "foot-ton" per acre, 2,816,000 tons of coal per foot. If there is a total of 5 feet, it means five times that amount, if it is 10 feet, it is ten times that amount, or, say 28,160,000 tons of coal. They would invest \$3,000,000 to mine 28,000,000 tons of coal. That coal would last twenty-eight years on that basis. At the end of the twenty-eight years the property is all worked out. They have simply received during that time the interest on their investment. When the coal is worked out, their entire plant is worthless, you see. Now, they consider—any investor, whether it is in the Pittsburg district, or any part of Pennsylvania, or the Pacific coast, or Alaska—will consider that there must be coal enough in sight to work for fifty years before the investment is safe. That is the universal viewpoint. Now, 2,560 acres does not give that life to the coal field, and an average of 10 feet is as conservative as it is possible to estimate. It gives hope, however, of what is universally considered a safe investment. No group of capitalists in New York, or Pittsburg, or Chicago will put a dollar into coal properties unless they have fifty years of coal in sight to mine.

Mr. CLEMENTS. Do you consider each one of these consolidations an independent operation, which must market its own product, including the marketing in distant ports?

Mr. BALLAINE. That will depend very largely on the way it will have to be worked out. The market of the Pacific coast extends all over that coast. It includes a little here and a little there. The naval stations at San Francisco and other points require coal, and the company that takes care of that market must not only have its mining machinery and its docks, but it must have its colliers—that is a very essential feature of the whole plan.

Mr. CLEMENTS. It seems to me that several might conveniently operate independent mines, but through the same sources.

Mr. BALLAINE. That is exactly what the law prohibits.

Mr. CLEMENTS. No; I don't think the law prohibits that. I hardly think for a moment you gentlemen would contend that we could not market our product through the Pennsylvania Railroad.

Mr. BALLAINE. That is true here in the East. But on the Pacific coast it is different. The marketing is in dribblets, scattered over thousands and thousands of miles. They must have a fleet of colliers to carry the coal.

Mr. CLEMENTS. For each mine?

Mr. BALLAINE. Yes.

Mr. PIERCE. Does not the question, after all, come down to this: Can the owner of a claim limited to 2,560 acres operate that one unit at a profit?

Mr. BALLAINE. You can not raise the money to develop it. You can not raise a dollar to put into it on that basis.

Mr. JOSLIN. There is another reason that Mr. Ballaine has suggested. To illustrate: They say the shape of these groups must not be more than twice as long as it is wide. [Produces sheet showing diagrams of claims.] * * *

Mr. BALLAINE. From the standpoint of national interests alone, leaving out every other consideration, something should be done to make the coal lands in those two districts, Matanuska and Bering, available. The navy at the present time is burning about 400,000 tons of coal a year on the Pacific, every pound of which comes from Wales, except a very small amount which is brought around from Pennsylvania. There is no coal now being mined on the Pacific coast at all which is of a high enough grade for the navy to burn. The consequences are that the navy on the Pacific is entirely dependent on coal which is brought in foreign vessels around the Horn to Mare Island, Seattle, Honolulu, and other places. In the event of war with Japan, which is always a possibility, we have not coal enough to-day on the Pacific coast to last the navy sixty days. There are not vessels enough on the Pacific coast available to carry ten days' supply from San Francisco to the Hawaiian Islands. The Government has already located a coaling station at Seward, on Resurrection Bay, 3,300 acres. A commission was sent two years ago to locate such a station; and there it rests, without any further action. The coal that the navy must have, in times of peace and in times of war, will come from those two districts and those two alone. There are no others on the entire Pacific watershed. If we should have war at any time the coaling station in Alaska would be probably one of the most strategic points in the entire situation. Without coal, of course, a fighting ship is utterly worthless. A basic rendezvous for the fleet would be made near the

source of coal supplies. The Government is spending several million dollars a year for foreign coal, at a cost of \$7 to \$14 per ton, when it could get all its own coal in its own territory at practically one-half to two-thirds of that amount, and have an ample supply to draw upon in case of war.

Mr. PIERCE. Is there anything that you wish to say, Judge Wickersham?

Judge WICKERSHAM. I have listened with a good deal of interest to the statements of fact made by these gentlemen, and know them all to be true. From my knowledge of the situation, I know that they have represented the situation with absolute frankness.

Mr. PIERCE. Mr. Joslin, you think it is obvious that your bill needs some corrections? Will you make such a statement in the record?

Mr. JOSLIN. If the withdrawal order of 1906 is abrogated, it will leave the coal lands of Alaska subject to location and entry under the act of 1904. In order to permit such future locations to be grouped it would be necessary to amend the draft of the bill presented so as to apply, not only to past locations, but to future locations as well.

Mr. PIERCE. Now, Mr. Ballaine, have you anything further?

Mr. BALLAINE. In any bill that is presented, there are two essential things, before capital can be interested to develop those properties: First, that the area shall be large enough to justify a reasonable expectation of production for fifty years—four or five or six thousand acres, or whatever it might be; second, that absolute title be given to the property. Capital will not go into it with a great many conditions hedged about it, which are likely at any time to wipe out their entire investment. That is the plain fact of the situation.

Mr. PIERCE. Is there anything further you would like to say, gentlemen?

Answer. No.

Senator SUTHERLAND. Mr. Brandeis, let me suggest to you that you call the attention of the committee first to the page and then state the substance of it, and we can then turn to it more readily and follow your statements.

Mr. BRANDEIS. I beg your pardon; I will do so hereafter.

Page 233; I will introduce the telegram of Commissioner Dennett of March 10, 1909, to Mr. Glavis:

Submit at once complete reports upon—

The CHAIRMAN. There is no need of reading that.

Mr. BRANDEIS. Very well.

(The telegram is as follows:)

[Telegram.]

MARCH 10, 1909.

Special Agent L. R. GLAVIS, *Portland, Oreg.*:

Submit at once complete reports upon present status investigation of all Alaska coal lands. Make separate reports upon separate groups, and individual reports where you have no information claim is in group. In reporting upon group mention individual claims therein. Your reports should in conclusion place entries in one of four classes, to wit, claims wherein present information suggests further investigation necessary; second, claims wherein investigations and evidence warrants adverse proceedings at this time; third, claims wherein investigation warrants proceeding to patent; fourth, claims wherein you have no information. Each report should set up or refer to facts upon which conclusion is based. You are authorized to employ extra stenographer for two weeks at twenty-five per week.

DENNETT, *Commissioner.*

Mr. BRANDEIS. Did you, in pursuance of that telegram, make reports on all of those cases?

Mr. GLAVIS. I did. I made reports during that month on all the cases.

The CHAIRMAN. Is your report in this record?

Mr. BRANDEIS. There is one report, a sample report, which I will introduce in a moment, but I call your attention to the fact, which appears on page 233 in Mr. Schwartz's statement, that there were 73 reports submitted.

Mr. OLMSTED. That is page 233.

Mr. BRANDEIS. Yes, sir. Now, on page 505 is the report in the Cunningham case, which I will now introduce.

Mr. JAMES. What page?

Mr. BRANDEIS. Page 505. The report of the Cunningham case:

PORTLAND, OREG., March 23, 1909.

COMMISSIONER GENERAL LAND OFFICE—

The CHAIRMAN. There is no need of reading it.

Mr. BRANDEIS. I think there are certain portions of it that should be read—

The CHAIRMAN. Very well.

Mr. BRANDEIS. In view of the fact that it is afterwards commented upon. [Reading:]

Pursuant to the instructions contained in your telegram of the 10th instant, calling for report of the present status of investigations of all Alaska coal entries, I have the honor to report in reference to the coal declaratory statements made by Clarence Cunningham as agent, and known as the "Cunningham group," involving the following coal declaratory statements:

Then follows the list. Then follows:

A brief history of the investigation of these cases is as follows: In the spring of 1907 former Special Agent H. K. Love commenced an investigation, but owing to his political ambitions and his intimate friendship with some of the persons involved, Special Agent Horace Tillard Jones was directed, under date of June 21, 1907, to make a thorough and complete investigation of these cases, and during the summer of 1907 both Special Agents Jones and Love commenced their investigation; but I have been verbally informed by Mr. Jones that later verbal instructions were received at Seattle directing them to only make a preliminary investigation with a view to determining what future action should be taken. In the course of this investigation many affidavits were secured, but owing to Mr. Jones's unfamiliarity with the Alaska coal-land laws he was only partially successful in securing evidence showing the true situation. Mr. Love was either also unfamiliar with the coal-land laws or was so prejudiced in favor of the claimants that he likewise failed to secure any damaging evidence.

While I was in Washington during the month of December, 1907, I verbally advised the office that a conspiracy existed involving nearly all the Alaska coal entries, and that the entries were not made for the individual use and benefit of the claimants, but with the object to combination so as to acquire more coal land than allowed by law. All the Alaska coal cases were shortly thereafter placed under my supervision with instructions to make a thorough investigation. During the months of April and May I commenced this investigation and secured about two hundred affidavits, but before sufficient time was allowed to complete this work I was directed to postpone taking further action. This, as I advised you by wire, would greatly lessen the Government's chances of securing sufficient evidence to cancel these fraudulent applications.

Then follows certain evidence in regard to this particular case and a reference to the journal. Then follows on page 507:

I have not been advised whether this group intend to consolidate their claims in accordance with the act of Congress approved May 28, 1908, but since said act is only for the benefit of bona fide coal entries, any entry fraudulently obtained and subject to cancellation can not be considered as bona fide entry and therefore could not be allowed the benefit of said act. I state these filings were fraudulently obtained, because if the facts admitted by the agent of the claimants and the claimants in their affidavits hereto attached had been set out in the declaratory statements filed in the land office, the same could not have been accepted and allowed without violating the statute. The facts so far obtained relative to this group of filings are identical to the case of United States v. Trinidad Coal and Coke Company (137 U. S., 160), and in this case the court held:

Then follows the statement of the court's opinion, and also a reference to other cases. Then follows:

Those interested in acquiring these coal lands are presenting the argument that by withholding title the Government is delaying developments in Alaska and preventing cheap coal from being placed on the market on the Pacific coast. As a matter of fact this is untrue, for the reason that the coal mines in the Cascade Mountains are offering their coal for sale at Seattle much cheaper than the coal mined in southwestern Alaska is being offered at Katalla, the nearest town. Furthermore, there would be greater criticism, and more just criticism, for the administration to allow patents to issue for these coal lands which the evidence shows to have been fraudulently made with the intention of consolidation and monopoly.

In the course of investigation heretofore made I was greatly embarrassed in my work by reason of the fact that many of the claimants appeared to be fully informed as to recommendations previously made by me and concerning the work which I had been directed to perform. It will readily suggest itself no doubt that one is greatly handicapped by being confronted with such a condition, and I may respectfully recommend that hereafter due care be taken to prevent the claimants or anyone interested from knowing what has been done or is contemplated.

In view of the foregoing and from my general knowledge of the Alaska coal-land cases, I believe further investigation should be made with a view to the cancellation of the entries.

The report of Mr. Glavis on the Cunningham case is as follows:

Alaska 3.

L. R. Glavis, Chief of Field Division, makes unfavorable report on Cunningham group. Alaska coal cases.

P

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Portland, Oregon, March 23, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Pursuant to the instructions contained in your telegram of the 10th inst., calling for report of the present status of investigations of all Alaska coal entries, I have the honor to report in reference to the coal declaratory statements made by Clarence Cunningham as agent, and known as the "Cunningham group," involving the following coal declaratory statements:

C. D. S.	Date filed.	Claimant.
No. 154.....	Feb. 21, 1906	Orville D. Jones.
" 156.....	" " "	C. Cunningham.
" 161.....	" " "	A. B. Campbell.
" 171.....	May 9, "	John G. Finch.
" 178.....	" 8, "	Frank F. Johnson.
" 158.....	Feb. 21, "	B. Nelson.
" 184.....	May 9, "	Alfred Page.
" 160.....	Feb. 26, "	Chas. J. Smith.
" 169.....	" 21, "	Henry White.
" 181.....	" 21, "	Frederick Burbridge.
" 164.....	" " "	H. W. Collins.
" 175.....	" " "	John G. Cunningham.
" 244.....	Mar. 9, "	K. J. Cunningham.
" 166.....	Feb. 21, "	Fred C. Davidson.
" 163.....	" " "	Michael Doneen.
" 159.....	" " "	Horace C. Henry.
" 156.....	" " "	Francis Jenkins.
" 183.....	" " "	Arthur D. Jones.
" 185.....	" " "	Fred H. Mason.
" 176.....	" " "	Frank A. Moore.
" 168.....	" " "	Fred Cushing Moore.
" 172.....	" " "	Miles C. Moore.
" 162.....	" " "	Walter B. Moore.
" 180.....	" " "	Ignatious Mullen.
" 182.....	Mar. 21, "	Joseph H. Neill.
" 186.....	Feb. 27, "	Reginald K. Neill.
" 167.....	" 26, "	Byron C. Riblet.
" 165.....	" 21, "	Chas. Sweeney.
" 173.....	" 21, "	W. M. Baker.
" 179.....	" " "	Henry Wick.
" 174.....	" " "	Wm. E. Miller.
" 152.....	Mar. 9, "	W. H. Warner.
" 177.....	Feb. 21, "	Hugh B. Wick.
" 170.....	Oct. 10, 1906	Wm. H. Battling.
" 157.....	" " "	Andrew L. Schofield.

A brief history of the investigation of these cases is as follows: In the spring of 1907 former Special Agent H. K. Love commenced an investigation, but owing to his political ambitions and his intimate friendship with some of the persons involved, Special Agent Horace Tillard Jones was directed under date of June 21, 1907, to make a thorough and complete investigation of these cases, and during the summer of 1907 both Special Agents Jones and Love commenced their investigation, but I have been verbally informed by Mr. Jones that later verbal instructions were received at Seattle directing them to only make a preliminary investigation with a view to determining what future action should be taken. In the course of this investigation many affidavits were secured, but owing to Mr. Jones's unfamiliarity with the Alaska coal land laws he was only partially successful in securing evidence showing the true situation. Mr. Love was either also unfamiliar with the coal land laws or was so prejudiced in favor of the claimants that he likewise failed to secure any damaging evidence.

While I was in Washington during the month of December, 1907, I verbally advised the office that a conspiracy existed involving nearly all the Alaska coal entries, and that the entries were not made for the individual use and benefit of the claimants, but with the object to combination so as to acquire more coal land than allowed by law. All the Alaska coal cases were shortly thereafter placed under my supervision, with instructions to make a thorough investigation. During the months of April and May I commenced this investigation and secured about two hundred affidavits, but before sufficient time was allowed to complete this work I was directed to postpone taking further action. This, as I advised you by wire, would greatly lessen the Government's chances of securing sufficient evidence to cancel these fraudulent applications.

Before this work was discontinued the affidavits of Clarence Cunningham, H. W. Collins, Henry White, Horace C. Henry, Frederick Burbridge, Miles C. Moore, Arthur D. Jones, Fred H. Mason, Orville D. Jones, Frank F. Johnson, F. Cushing Moore, Chas. J. Smith, Fred C. Davidson, W. H. Warner, Henry Wick, and Michael Doneen were taken, copies of which are hereto attached and extracts thereof are as follows:

Clarence Cunningham states: "I then returned to Wallace, Idaho, and interested my friends in joining me in making further investigation; ten of those interviewed became interested and contributed \$500.00 each for the purpose of further exploiting the fields; we then decided to secure coal fillings on the land; in the meantime I interested about twenty other persons, all of whom have since made coal entries for one hundred and sixty (160) acres each; each of the entrymen contributed about the same amount of money, amounting to approximately \$4,000.00 each; this money was spent in developing the fields as a whole, completing trails to the coal fields, uncovering coal veins upon the various claims, building houses, and etc. * * *

"We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves; we have had an understanding that when patents had been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea that when title was secured we would combine our claims and work the coal field for ourselves; we have always proceeded with that end in view."

H. W. Collins states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Henry White states: "The money was expended by Cunningham in developing the said claim as a whole. I only attended one meeting of the coal claimants, which was last fall; the formation of a company was not formally discussed, but I understand that the question of getting together and putting in a railroad in connection with our claims has been discussed informally among the claimants. Cunningham has had absolute control over the disbursement of moneys that I have paid in on this land."

Horace C. Henry states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Frederick Burbridge states: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Miles C. Moore, Arthur D. Jones, and Fred H. Mason all state: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

Orville D. Jones states: "Cunningham was agent for thirty-one other entrymen who, like myself, advanced various sums of money; the money was

expended by Cunningham to develop and improve the coal fields as a whole * * * the matter of the formation of a company was never formally discussed at any of our meetings, but we have discussed this question among ourselves, as we were well satisfied that we could not handle the claims individually * * *. We have therefore understood among ourselves that when title had been secured we would form a company and combine the entire group."

Frank F. Johnson and F. Cushing Moore certify that affidavit of Orville D. Jones is true with respect to their claims also.

Chas. J. Smith states: "We have understood among the entrymen that when title was secured we would probably form a company for the operation of the entire group on the grounds of economy."

Fred C. Davidson, W. H. Warner, and Michael Doneen all state: "We have understood among ourselves that when title was secured we would form a company and combine the entire group."

In addition to the affidavits secured, I secured numerous circulars and exhibits, with which you are partially familiar, showing the fraudulent character of this group of entries. Reference is particularly had to the journal book kept by Clarence Cunningham, the agent of these claimants, which shows conclusively that they were being worked for the mutual benefit of each other, share and share alike, and on the first page thereof is an agreement—"Whereby each of said subscribers shall have a claim of 160 acres recorded in his name and will own the same individually until such time as title can be secured for same. After this is done each subscriber agrees to deed his interest to the company to be formed for the purpose of developing and marketing said coal and receive stock in said company in payment for same, and it is further agreed that each subscriber shall have one-eighth ($\frac{1}{8}$) of his stock issued to Clarence Cunningham in consideration of his services in securing said land. * * *. In carrying out the above plan the following subscribers paid amounts as follows, those paying first getting in at a lower rate than when options were paid and surveys made." The journal book thus shows that in accordance with this agreement they continued to make payments up to and including December, 1907, and was evidently still carrying out this unlawful agreement. The original journal was forwarded to you with the recommendation that certified copies be made, and I respectfully ask that I be furnished with this certified copy when adverse proceedings are brought.

I have not been advised whether this group intend to consolidate their claims in accordance with the act of Congress approved May 28, 1908, but since said act is only for the benefit of bona fide coal entries, any entry fraudulently obtained and subject to cancellation can not be considered as bona fide entry and therefore could not be allowed the benefit of said act. I state these filings were fraudulently obtained because if the facts admitted by the agent of the claimants and the claimants in their affidavits hereto attached had been set out in the declaratory statements filed in the land office, the same could not have been accepted and allowed without violating the statute. The facts so far obtained relative to this group of filings are identical to the case of *United States vs. Trinidad Coal and Coke Company* (187 U. S., 160), and in this case the court held:

"It is true, in the present case, that some of the persons who made entries in question were not, strictly speaking, members of the corporation, but only its employees. But, as they were parties to the alleged scheme and were, in fact, agents of the defendant in obtaining from the Government coal lands that could not rightfully have been entered in its own name, that circumstance is not controlling. * * *. There is, consequently, in view of all the allegations of the bill, no escape from the conclusion that the lands in question were fraudulently obtained from the United States."

Your attention is also respectfully invited to the decision by the Supreme Court in the case of *United States vs. Kettel et al.*, which is another similar case to the one involved. The facts and evidence in this case places it in the same category with the *Portland Coal and Coke Company* case, involving coal lands in the Vancouver district, which I investigated several years ago and in which suits were instituted in the United States circuit court for the western district of Washington. This case was recently decided by Judge Hanford on bills and answers. In the answers of some of the defendants in this case they deny the charges of conspiracy and fraud; deny that there was an agreement preceding the entry made in their names, binding them to convey the title or hold it in trust; and deny that the United States has had any right to, or interest in, the property subsequent to the issuance of the patent to them. They admit, how-

ever, that it was their "expectation * * * that the lands * * * should be developed and exploited at the joint expense of the entrymen thereof and that the proceeds of all mineral extracted or taken therefrom and sold should be used for the payment of the expenses of operation, and that when said lands should have been entered * * * the said lands * * * should be developed and exploited and the mines thereon operated for the benefit of all said entrymen, share and share alike." They also aver that they acted under the advice of counsel and believed, and now believe, that a combination of individuals for the purpose of cooperation in acquiring and operating coal-mining property at the joint expense of all and for the sharing of profits equally is not contrary to law. The court decided this case in favor of the United States, and held, in part, as follows:

"Considered in its entirety this answer is a virtual confession that they, the answering defendants, voluntarily associated themselves with others to acquire tracts of land in severalty, but to be held for the joint benefit of all in equal shares, and the only actual opposition to the granting of the decrees demanded by the Government is this contention of these two defendants, that the pooling scheme above outlined is not contrary to the statute. * * * If the scheme was not unlawful each member of the combination would have a legal right to compel his fellow-members to hold each and every tract for the benefit of all, and to have an accounting of all profits derived from mining operations in each and every tract, although the legal title might be retained by the individual members in severalty. So that the object of the combination was to acquire coal land in excess of 320 acres for an association, although the law fixes the maximum quantity at 320 acres."

This decision has not been reported, but I have heretofore furnished the office with a copy thereof.

Those interested in acquiring these coal lands are presenting the argument that by withholding title the Government is delaying developments in Alaska, and preventing cheap coal from being placed on the market on the Pacific coast. As a matter of fact this is untrue, for the reason that the coal mines in the Cascade Mountains are offering their coal for sale at Seattle much cheaper than the coal mined in southwestern Alaska is being offered at Katalla, the nearest town. Furthermore, there would be greater criticism, and more just criticism, for the administration to allow patents to issue for these coal lands which the evidence shows to have been fraudulently made with the intention of consolidation and monopoly.

In the course of investigation heretofore made I was greatly embarrassed in my work by reason of the fact that many of the claimants appeared to be fully informed as to recommendations previously made by me and concerning the work which I had been directed to perform. It will readily suggest itself no doubt that one is greatly handicapped by being confronted with such a condition, and I respectfully recommend that hereafter due care be taken to prevent the claimants or anyone interested from knowing what has been done or is contemplated.

In view of the foregoing and from my general knowledge of the Alaska coal-land cases, I believe further investigation should be made with a view to the cancellation of the entries.

Respectfully,

(Signed)

L. R. GLAVIS,
Chief Field Division.

JAP.

Mr. McCALL. Mr. Brandeis, I am not familiar with this case at Trinidad; but in the quotation given in this record I see the court says this: "But, as they were parties to the alleged scheme and were, in fact, agents of the defendant in obtaining from the Government coal lands." Now, would that extend to the case where different entrymen were entering, each for his own interest, with an understanding and a cooperation?

Mr. BRANDEIS. Yes, sir; I think it does on the same ground that each member of a partnership is an agent for all the others; on that same theory they are jointly interested, and therefore each one is acting not only in his own behalf, but also on behalf of the others. And I think it will be found that in the other cases the same principle

was adopted. I should think that the Trinidad Coal Company case was rather laying down a general rule, of which this was an application, than it can be said it was precisely the same case. The case that was more clearly like it, I should think, was the Portland Coal and Coke Company case.

Mr. McCall. That was the one decided——

Mr. Brandeis. October 5, 1908.

On page 233, in Mr. Schwartz's statement, is contained at the bottom of the last paragraph the same reference which I have read before:

He (referring to Glavis) submitted 73 reports, covering all the coal claims in Alaska, between the dates of March 20 and the middle of April, 1909, in each of which he repeated the statements contained in the last half of page 16 and the first half of page 17 and the two paragraphs in the center of page 20 of his statement to you. These I considered an unwarranted reflection upon the Secretary, commissioner, and the office generally. So far as I am aware, no one except government officials entitled thereto has ever had access to or knowledge of any of the Alaska coal files. Immediately upon receipt of these reports, etc.

The CHAIRMAN. Now, maybe you can help us there, Mr. Brandeis. He refers in this paragraph here to pages 16 and 17 and two paragraphs on page 20 of his statement to you. That probably is a type-written statement. Can you locate it in this book?

Mr. Brandeis. I have not been able to definitely locate it, but I think it is the paragraph which I read, which sets forth two things—in the first place the discontinuance or the suspension of the work, and the next place the fact that the entrymen had acquired this information——

The CHAIRMAN. In the office here?

Mr. Brandeis. In the office. I think it was that which it must have referred to, and it was for that reason I read the passage.

I will ask you, Mr. Glavis, why you inserted the same paragraph in each of the reports?

Mr. Glavis. I wanted to make each of the reports complete and full. I thought it was rather peculiar that they would call on me at that time, knowing what I had investigated heretofore and knowing I had not done anything since that time.

Mr. Brandeis. On page 512 I introduce a telegram of Proudfit, acting commissioner, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 3, 1909.

Special Agent L. R. Glavis,
Seattle, Wash.

Matter mentioned in my wire March 10. When will report Cunningham group be submitted? Answer by wire quick.

And then on the same page, 512, the reply of Glavis:

SEATTLE, WASH., April 3, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Baje (report, I suppose, or telegram) April 3. Report mailed March 23.
GLAVIS, Chief.

Also the telegram on the same page of Glavis to the commissioner, as follows:

SEATTLE, WASH., April 8, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Hedrick and Booth have reported. Recommend that transfer to Portland. Only coal and timber work here requires experts. More agents unnecessary. Authorize employment two coal experts for month.

The CHAIRMAN. The word "reported" there means that they have reported for duty, and that is all?

Mr. BRANDEIS. Yes, sir; for duty. It follows the telegram, Dennett, commissioner, on the same page, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 9, 1909.

Special Agent GLAVIS,
Seattle, Wash.

You are authorized to employ two coal experts at \$7 and transportation pending eligible list.

Mr. GRAHAM. If "reported" means reported for duty, what is the meaning of recommending their transfer? You would not transfer a new man.

Mr. GLAVIS. I had no use for a new man there. The work there was such that a new man could not do it.

Mr. GRAHAM. The point is, however, does reported mean, as the chairman suggests, reported for duty, or does it mean that they made a report of what they had been doing?

Mr. GLAVIS. No, sir; they reported for duty, and they were two men who had just been appointed, and I had work which they could not do, because mine was timber cruising and the examination of coal lands, both of which required experts, and the Alaska coal investigation, which required experienced agents.

The CHAIRMAN. You called for two coal experts and were authorized to get them, were you not?

Mr. GLAVIS. Yes, sir; I employed them later.

Mr. BRANDEIS. On page 284 I introduce the letter of Secretary Ballinger to the commissioner, of April 14, 1909, as follows:

The CHAIRMAN. I do not see the necessity for reading all of that letter. It can be put in evidence and the committee will read it.

Mr. JAMES. It may aid him in bringing out testimony of the witness, Mr. Chairman.

The CHAIRMAN. Unless there is something that he wants to read and call the especial attention of the witness to, it would be all right to read it, but there would be no occasion otherwise to read the whole letter. It will be inserted in the record.

Mr. BRANDEIS. I will simply ask that it will be inserted in the record.

The CHAIRMAN. If there is something that you want to bring to the attention of the witness to lay a foundation for a question, that is a different matter.

Mr. BRANDEIS. Perhaps I can do that later. I do not want to take the time of the committee now, but will content myself with simply introducing the letter.

The CHAIRMAN. You introduce this letter?

Mr. BRANDEIS. I introduce this letter, and also the letter on the same page, 284, in reply to it by Mr. Schwartz to the Commissioner of the General Land Office, dated April 16, 1909. Also, on page 510, the letter of Mr. Schwartz to Mr. Carr. Mr. Carr was then the private secretary to Secretary Ballinger. The letter is dated April 16. The letters are as follows:

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 14, 1909.

SIR: I have your memorandum of this date giving a tabulated showing of the volume and condition of the field work at the close of the month of February of this year. Your report shows a surprising number of undisposed-of cases for field investigation, as well as cases pending in the United States courts. I am strongly convinced that upon a preliminary investigation made by your chief of field service in conjunction with the chiefs of divisions, many of these cases will be found to be of a character which would not warrant the necessary expenditure of time and money for detailed separate investigation. I do not wish the department to be put in the position of encouraging investigations that are not strictly in the interests of protecting the Government on the one hand and the bona fide settler or locator on the other. In all organizations such as your field organization the tendency is to extend the field of operation beyond what is reasonable and necessary in the public interest. Your officers, therefore, will have to justify themselves completely in the scope of the investigations which they undertake. I would like to have you, together with Mr. Schwartz, carefully consider whether or not a portion of the cases listed for field investigation, as well as those pending in court, could not very properly be released, and thereby permit you to concentrate your energy upon the more flagrant alleged violations of law, thereby making it practicable to entirely dispose of the pending cases and keep well within the appropriation.

The healthful example resulting from a speedy examination, trial, and conviction of flagrant cases will, in my estimation, do more to protect the interests of the Government than to spread your energies over a wider and less successful field.

I would be glad to confer with you, the chief of field service, and the Assistant Attorney-General respecting this matter at your earliest convenience.

Very respectfully,

R. A. BALLINGER, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 16, 1909.

The honorable COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: October 20, 1908, I addressed the following letter to all chiefs of field division:

"As the office has heretofore advised you, the number of cases reported in any particular division is not necessarily a criterion of the value of the services performed. The office appreciates entirely that the respective field corps are working with energy, and are endeavoring to give the Government the best service possible, and this subject is only mentioned out of an abundant caution that none of the more important cases be neglected in an endeavor to make a large showing in the number of individual cases handled. In a recent address to a large number of new agents, the Secretary laid a special emphasis upon the fact that it was equally our duty to see that the honest settler, or other citizen seeking to acquire public lands, be not delayed, and that wherever good faith is apparent, and the limitations of the law permitted, the efforts of settlers to establish themselves upon the land, or reduce it to beneficial uses, should receive encouragement. It has been my opinion for some time that we might give more of our attention to the larger cases, and thus release more of the small cases where it is only some technical violation of the law by particular individuals, who are otherwise not subject to criticism."

March 5, 1900, by telegram, I directed the chiefs of field division to begin a new docket of cases on that date; and March 16, 1900, I further advised them, by circular letter, that the purposes in starting a new docket and keeping the old cases segregated were several, as follows:

"Pending cases, including old snags, will all be closed out during the coming fiscal year—so far as departmental action is concerned in purely department cases, and so far as any action by the department is concerned, prior to reference to the Department of Justice, in cases requiring action in that department. The men necessary for this work will be supplied. Each chief, within his jurisdiction, and the chief of the special service division in the General Land Office (or other office chief having jurisdiction) will be held directly and personally responsible for the steady and expeditious clearing of the pending dockets."

After more instructions in detail, my letter further advised:

"You will also be supplied with sufficient number of agents to keep current the new work. It is required that it be kept current, and that no case be allowed to lag, either because of inherent difficulties or by reason of its geographic isolation;" and my circular concluded:

"In addition to the regular monthly report, which will be made as now, you will each month submit a monthly work sheet showing condition of cases which were pending in your office at the close of business March 3, 1909."

In addition to the foregoing, I have personally impressed upon all those chiefs of field division with whom I have had conversation that the standing and promotion of chiefs, as well as of agents, depend not upon the volume of business in their districts, but upon their ability to reduce that business and satisfactorily and promptly overtake the work. I have also advised them that, so far as my recommendation may go, there shall be in the future a higher standard of compensation, and a higher class of agents, rather than low compensation and a large number of agents. For this reason, not only the question of who is to be retained after the close of the coming fiscal year, but the question of a good salary will depend upon the showing made in overtaking the work.

RESPONSIBILITY FOR VOLUME OF WORK.

I think a little analysis of the amount of business pending will demonstrate that your field force is not, as a matter of fact, chargeable with any tendency to extend the field operations.

There is a total of 34,651 cases pending. Of this total, 16,745 are suspended by the arbitrary rule of the department itself, and are embraced in the following items:

State selections (largely coal area).....	3, 524
Rights of way, survey applications, and Carey Act.....	1, 533
Homestead entries, coal areas.....	9, 255
Desert-land entries, coal areas.....	2, 433
Total	16, 745

This leaves a total of 17,906 cases which are not, as a general rule, attributed directly to the department in their origin.

Of the 17,906 cases thus remaining, there are 2,580 cases of timber trespass, and 1,767 cases of unlawful inclosures. We have also 1,445 court cases, none of which cases can well be eliminated by any process short of field investigation or trial in court.

As to the court cases, they have been reduced in the last year over 50 per cent by detail examination of the dockets in the United States attorney's offices and dismissal of all cases in which there was not reasonable expectation of securing judgment or verdict.

This leaves a total of 12,114 cases, which may be properly chargeable to the individual complaints that come to the General Land Office and the special agents or to the preliminary investigation by agents.

At the last tabulation of all entries pending in the United States General Land Office (June 30, 1908) there was a total of 340,999 entries and applications.

It will therefore be observed that cases arising by reason of individual and specific complaint—unassociated with general departmental orders of withdrawal—comprise about 12,114 in a total of over 340,000 cases pending. This is less than per cent of the total business temporarily withdrawn for the purpose of investigation upon charges made.

As I said to the Committee on Appropriations, and as I have stated at various times, it is my conviction that neither the Interior Department itself nor Congress has ever yet appreciated the volume of business pending in the General Land Office, and until there is an apprehension of the volume of this business and of its ramifications we will never be able to appreciate and give consent to the field examinations required.

It will be seen from the foregoing that at least half of the total business pending in the field arises by rule of practice, regardless of individual conditions, and is predicated upon over 22,000,000 acres of coal-land withdrawals, which arbitrarily suspend all nonmineral entries within these areas, in addition to which there are arbitrary rules for the investigation of all pending rights of way, applications for survey, Carey Act applications, and several thousand entries in a large territory at the intersection of the States of Wyoming, Colorado, and Idaho, on the allegation that that district contains valuable deposits of phosphate; townships suspended in California upon the theory that the lands were valuable for oil, to which must be added several thousand cases normally carried and not included in the above tabulation, which stand suspended by reason of reports from forest officers.

As a matter of fact, the hands of the Land Office are tied, and it is unable to proceed in any case within a national forest unless it shall have secured the clear list or approval of the Forest Service.

I agree entirely with the Secretary's note that every effort should be made to reduce the volume of this business, but I wish also to add that every effort available is being made within the limits of the powers of this office.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 16, 1909.

Mr. CARR: I attach hereto a recent report received from Mr. Glavis in the matter of the Cunningham group. I have just seen this report, and to say that I am surprised at its general tenor is putting it rather mild.

As a matter of fact, the records disclose (1) that in December, 1907, while in this city, Mr. Glavis was supplied with a complete copy of all papers, records, and files bearing upon the charges of irregularity in reference to the entry and acquisition of coal lands in the district of Alaska; that (2) December 28, 1907, he was advised that Chief of Field Division Colter was making certain additional investigations in the vicinity of Detroit, Mich., and the letter of that date to Mr. Glavis concludes:

"You will from time to time, as rapidly as possible, make separate reports upon individual entries or separate group of entries, to the end that action may be taken without further delay.

"(Signed) BALLINGER."

(3) January 7, 1908, Mr. Glavis was advised that the particular group known as the Cunningham group had been clear listed upon the favorable report of Special Agent Love. (This clear list was immediately withdrawn at the request of Mr. Glavis.)

(4) February 5, 1908, Mr. Glavis was advised: "You will, therefore, on receipt of this letter proceed to Spokane and complete your investigation and make your final report as to these claims (Cunningham group)."

(5) Subsequently the coal investigations in Alaska were temporarily suspended, pending a determination of what procedure might be had in view of the coal-land legislation of May 28, 1908, which was intended to permit the consolidation of claims in Alaska.

(6) October 7, 1908, Mr. Glavis was advised, among other things:

"Your investigation of these coal entries was temporarily deferred during the pendency of the last Congress in a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

"You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally made adverse report and ask for the cancellation of these entries.

"This office has been informally advised that the various entrymen known as the Cunningham group have concluded to stand upon the old law and ask for a patent upon the now pending applications. The reports as made by you to this office show that these applications were fraudulent and should be canceled. Proceedings will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the Government's case at the hearing."

(7) Mr. Glavis has since been proceeding under that last instruction.

Mr. Glavis's statement that he has been "greatly embarrassed by reason of the fact that many of the claimants appear to be fully informed as to recommendations previously made by me and concerning the work which I had been directed to perform" is not understood in this office, as claimants have been given no information, except the general proposition that their claims are suspended at the request of field officers.

I believe the various statements from claimants quoted by Mr. Glavis fully show the situation in reference to these claims, and we should determine whether, as a matter of law, this showing warrants a hearing, and if it does, we should advise Mr. Glavis that these cases must be speedily brought to a hearing and the rights of the claimants determined.

Respectfully,

(Signed)

H. H. SCHWARTZ,
Chief of Field Service.

OWN

The foregoing letter contains the following pencil notation on face: "This letter has been seen by Mr. Carr. CWN."

Copy by FRL.

The CHAIRMAN. Mr. Brandeis, you had better introduce in connection with that letter of Mr. Ballinger, so as to help us in getting the record into shape, the supplement there by Mr. Schwartz.

Mr. BRANDEIS. He quotes Mr. Ballinger. That is one document, I think, in Mr. Schwartz's letter to Mr. Carr.

The CHAIRMAN. You introduced the whole of it?

Mr. BRANDEIS. I introduced the whole of it—Mr. Schwartz's letter to Mr. Carr.

Senator FLETCHER. Including the notation on the face?

Mr. BRANDEIS. Yes, sir; including the notation on page 511.

The CHAIRMAN. Down to the words in italics?

Mr. BRANDEIS. Yes, sir. Perhaps I had better put in one other paper. On page 514 is a telegram of Schwartz to Glavis, dated April 20, 1909, as follows:

Sent APRIL 20, 1909.

Special Agent GLAVIS, *Seattle, Washington*:

Alaska coal investigations must be completed within sixty days. What number additional agents do you require? Answer by wire.

(Signed) SCHWARTZ,
Chief of Field Service.

On page 15 is the reply—April 20, 1909:

To complete Alaska cases in two months Jones and four more agents necessary. Six hundred affidavits to secure. Snow will prevent field examination until July.

GLAVIS, *Chief*.

The CHAIRMAN. Now, Mr. Brandeis, to help the committee—and I take it that is what you want to do——

Mr. BRANDEIS. Wholly——

The CHAIRMAN. Now, what is the response of the department to that telegram of Glavis? Can you locate that or give us a reference to it?

Mr. BRANDEIS. I will ask Mr. Glavis to do that.

The CHAIRMAN. If there is anything in this book here—telegrams or letters in response to that—what did the department say in reference to getting additional help?

Mr. GLAVIS. They said Jones was not available, but they had sent a couple of other agents; their names I do not recall.

The CHAIRMAN. Is that in this book here?

Mr. GLAVIS. Yes, sir; I think it is.

The CHAIRMAN. I think it ought to come in at this point in order to assist the committee.

Mr. DENBY. Were those 600 affidavits that you said you had to take all in connection with the Cunningham group?

Mr. GLAVIS. No, sir; nearly all of them were in connection with other coal cases.

Mr. DENBY. During this investigation, which appears to have extended over a period of two years or more, you examined all the Cunningham claimants, did you not?

Mr. GLAVIS. Yes, sir; we got affidavits from every one of them, I think.

Mr. DENBY. And some 150 other affidavits in connection with the Cunningham cases?

Mr. GLAVIS. No, sir; they related to other cases.

Mr. DENBY. Did you ever indicate to the department what further proof you needed or intended to try to get in regard to the Cunningham group?

Mr. GLAVIS. Yes, sir; Mr. Schwartz and I had discussed that often as to the necessity for field examination.

Mr. DENBY. Is that in writing or in print anywhere?

Mr. GLAVIS. There is one letter that suggested that, and that was a personal letter—one of the letters we called for. That is not in this record. That I wrote Mr. Schwartz in February, 1908, suggesting it.

Mr. DENBY. Telling him the character of the proof you expected to get?

Mr. GLAVIS. Yes, sir; that was before I had started upon the investigation, merely giving an idea of what I expected to find when I started.

Mr. DENBY. Most of your telegrams simply say, "More investigations needed," and similar language to that. I do not see anywhere among your communications to the department any statement showing what kind of investigations they were to be or what character of evidence you expected to produce.

Mr. GLAVIS. Well, I never set that up in a telegram.

Mr. DENBY. Well, a letter or a report or any other way—did you set it out?

Mr. GLAVIS. I do not think so—yes; in the letter of March I called attention to it.

Mr. DENBY. March of what year?

Mr. GLAVIS. I think—

Mr. BRANDEIS. There are one or two letters that I would like to introduce here that may answer your question, Mr. Denby.

The CHAIRMAN. In reply to that telegram?

Mr. BRANDEIS. Yes, sir; it is the letter on page 514, being a letter of Glavis to Schwartz dated April 27, 1909, and is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, April 27, 1909.

Mr. H. H. SCHWARTZ, *Chief of Field Service, Washington, D. C.*

SIR: I am leaving to-day for California accompanied by Special Agent Stoner and Timber Cruiser Bowman to make the necessary investigations in said State relative to the Alaska coal cases. We have just finished a like investigation in Oregon.

It is expected that the California work will be completed within a week, and from there we shall proceed to Chicago, where there are seventy-five entrymen residing to be interviewed. There are also sixty-three coal claimants residing at Detroit and about a hundred other coal claimants throughout the Eastern and Middle Western States, all of whom will be investigated during this trip.

In order to complete the investigations within the period designated by you, Special Agent Andrew Kennedy and Timber Cruiser Adams will meet me in Chicago. When the work in the East is completed we will return to Washington and there complete the work in said State, where there are about 450 coal claimants, all of whom will be interviewed. This will complete the investigations except the field work, which I stated in my telegram to you could not be attended to until July, and the interviewing of coal claimants in Alaska, amounting to some 75 persons. I had intended to have Special Agents H. T. Jones and Percy Smith make such investigations, but owing to your telegram of recent date that Mr. Jones was not available this work will be necessarily delayed until my return from the East.

Until my return to Seattle, therefore, there will be no work for Special Agent Percy Smith, and as there has been some mail received for Special Agent Metzger it is presumed he has been directed to report to me for duty. If such is the case, there will be no work for him, and I therefore respectfully recommend that they be temporarily assigned to some other division, as there is practically no work in western Washington which they can perform. The only cases requiring field investigations in western Washington are cases within areas classified as coal land, which requires an examination by a coal expert, and all of such work is now in the hands of two coal experts.

My experience has been in the investigations of conspiracy under the coal-land laws that it is impossible to secure any results unless the agents are thoroughly familiar with all phases of conspiracies and the law. This belief is strengthened from the result of former investigations by agents in the Alaska coal cases. In order to secure the best results, it is my opinion that this work should be under my own supervision, and therefore neither Special Agents Smith nor Metzger will be required on this work until my return to the State of Washington, which will be within the next six weeks. Then with the entire force of agents in my division I believe the necessary investigation in the State of Washington can be finished in two weeks before the period given me in which to interview these nine hundred claimants will have expired.

Should you desire to communicate with me, you may do so within the next week by addressing a letter care general delivery, Chicago, Illinois. Upon my arrival in Chicago I will further advise you of any change of address.

Respectfully,

(Signed) L. R. GLAVIS,
Chief Field Division.

The CHAIRMAN. That is not what I referred to. This is the reply that was made to this telegram of Mr. Schwartz on page 15—"to complete Alaska cases in two months." You recall, Mr. Brandeis, that the department had wired him to complete it in sixty days?

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. And his reply was, "To complete Alaska cases in two months, Jones and 4 more agents necessary. Six hundred affidavits to secure." Now, what I want to get at is the response of the department to that.

MR. BRANDEIS. I find nothing. There are 4 letters which I will introduce here, which is all that I have been able to find which bear upon the matter. I think we have included that in our request.

THE CHAIRMAN. The point I want to get at in this connection is, Did they give him this additional help that he wanted?

SENATOR FLETCHER. If you will look at page 515, Mr. Chairman, you will see the following:

I had intended to have special agents H. T. Jones and Percy Smith make such investigations, but, owing to your telegram of recent date that Mr. Jones was not available, this work will be necessarily delayed until my return from the East.

Evidently a telegram was sent.

MR. GLAVIS. Yes; a letter or telegram, I do not know which it was. I thought it was in that record.

MR. COTTON. It is not here.

MR. BRANDEIS. No; there are quite a number of communications, as I have already indicated—really quite a number of communications which were omitted from this record.

MR. DENBY. Perhaps Mr. Glavis can state what the department did in response to that telegram.

MR. GLAVIS. That letter will explain it.

MR. BRANDEIS. If you will look at that letter of April 27, which follows it, perhaps you may refresh your recollection, if you have not a clear recollection on any point.

SENATOR FLETCHER. Did you offer the letter?

MR. BRANDEIS. I introduced the letter of April 27.

THE CHAIRMAN. It is admitted in evidence.

MR. MADISON. I think the first paragraph in the letter of April 27—the first paragraph at the top of page 515—is a response to that telegram.

THE CHAIRMAN. I will say, Mr. Madison, that while these investigations were in California and other places, they all relate to these coal claims—the Cunningham claims. They relate to these Alaska coal claims. It is not work with regard to claims in California; it is Alaska claims.

MR. MADISON. Yes. Now it says this:

When the work in the East is completed we will return to Washington and there complete the work in said States where there are about 450 coal claimants, all of whom will be interviewed. This will complete the investigations except the field work, which I stated in my telegram to you could not be attended to until July.

Evidently those 450 coal claimants were Alaska coal claimants—that is right?

MR. GLAVIS. This whole letter refers to the Alaska investigation.

MR. BRANDEIS. Did the trip to California, or was the trip to California in connection with the Alaska cases?

MR. GLAVIS. Yes, sir; that was; and the trip to Chicago and the trip I made to the East and Middle Western States; all were investigating and interviewing Alaska coal claimants.

MR. BRANDEIS. How many coal claimants were there in California?

MR. GLAVIS. Oh, approximately about 30, I think.

THE CHAIRMAN. Can you recall to what groups they belonged? Did they belong to the Cunningham group?

MR. GLAVIS. One of them did belong to the Cunningham group. We did not get to see him. He resided at Los Angeles.

Mr. GRAHAM. Perhaps reading the last sentence of the paragraph referred to by Judge Madison would enable you to recall and answer the chairman's question. You say—

I had intended to have Special Agents H. T. Jones and Percy Smith make such investigations, but owing to your telegram of recent date that Mr. Jones was not available this work will be necessarily delayed until my return from the East.

Can you recall the telegram therein referred to?

Mr. GLAVIS. That is the one I mentioned that was in answer to that telegram that I sent, but I do not recall just what it stated.

Mr. GRAHAM. Do you recall, in a general way, whether it authorized you to get the help asked for in the telegram on page 15?

Mr. GLAVIS. There was some mention in it that Jones was not available and that they were going to send some others—I do not remember their names now.

Mr. GRAHAM. And you do not know, do you, whether the telegram is in this record?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. I have made a pretty careful search, and I have not found anything at this time except their letters.

Mr. GRAHAM. Do you know whether you have asked for the production of that telegram in your statement to the chairman?

Mr. BRANDEIS. I do not know whether we have specifically, but we desire all of the papers that are not here, and we will make specific reference to that telegram in a subsequent request.

Mr. MADISON. You did in effect, did you not? I am not putting it in the form of a question, as I realize it is asking you for a construction of your own instrument of writing, but the idea that you meant to convey by your letter of April 27, 1909, was that you would attempt to, and you thought you could, perhaps, close up that investigation in the sixty days.

Mr. GLAVIS. Except the field work.

Mr. MADISON. You could do it all except the field work?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. You say here—

In order to complete the investigations within the period designated by you, Special Agent Andrew Kennedy and Timber Cruiser Adams will meet me in Chicago.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. So you thought you could finish it all and this letter is an answer to that telegram to that effect?

Mr. GLAVIS. Yes, sir; I thought so at that time.

Mr. MADISON. Did you go to work and try to complete it in the sixty days?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. What progress did you make; what results did you get from your efforts?

Mr. GLAVIS. Well, we got something like two or three hundred affidavits; got the records and evidence in the Alaska matter.

Mr. BRANDEIS. Will you not state, Mr. Glavis, exactly what you did in that time, where you went, and what you did at the different places, and who went with you as special agent?

Mr. MADISON. If you will pardon me, I would like him to just answer my question. Mr. Glavis, just tell me what result you got,

without going so much into detail; tell me what you accomplished in that sixty days.

Mr. GLAVIS. We got three or four hundred affidavits—about 300 affidavits.

Mr. GRAHAM. Scattered over how much territory?

Mr. GLAVIS. We started in at Portland, Oreg., and got affidavits there, and went down to California and got affidavits at Sacramento, San Francisco, Oakland, San Jose, and Los Angeles. Then we went from there to Chicago and got 30 or 40 affidavits in Chicago, and I took Stoner—Special Agent Stoner—and Bowman with me through Portland and California and through to Chicago. There we met Agent Kennedy and got affidavits and evidence in Chicago. Then we went to Detroit, Mich., and secured all the documentary evidence of the Michigan and Alaska Development Company. That involved about 300 coal filings in Alaska, and we commenced securing the affidavits there.

Mr. BRANDEIS. How many of them were there?

Mr. GLAVIS. How many affidavits did we get? We got about 65 or 70 affidavits on that trip in Detroit, I think. Then I left Special Agent Bowman in Detroit, and Special Agent Stoner was subpoenaed to report to the United States court in Portland, and Mr. Kennedy and I came on East. We stopped at Pittsburg and went through Pennsylvania, and I came on to Washington. Then, in June, Mr. Kennedy made an investigation in New York and the New England States.

Mr. MADISON. In connection with the Alaska coal cases?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Were any of them in connection with the Cunningham group?

Mr. GLAVIS. No, sir; there were none in the Cunningham group.

Mr. MADISON. You got about 300 affidavits. Of course they were from 300 different persons?

Mr. GLAVIS. Yes, sir; and we had to hunt in order to locate those people.

Mr. MADISON. You did not complete the task; you did not cover all the ground.

Mr. GLAVIS. No; I kept on getting new evidence, other evidence which was developing, what we could not foresee.

Mr. MADISON. In other words, you had not covered the entire field, but only a part of it, at the end of the sixty days?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Then what did you do?

Mr. GLAVIS. I wired the office that I was still securing evidence in the case.

Mr. MADISON. What did they wire you back?

Mr. GLAVIS. They said that my report had to be submitted, but that I could continue my investigations.

Mr. MADISON. They said you were to submit a report, but to go ahead with your work?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Did you do that?

Mr. GLAVIS. No, sir; I did not submit the report right then, but started to—

Mr. MADISON. Why not?

Mr. GLAVIS. Yes; I submitted some, but not all of them, because when I went to put the affidavits in each group together and examine them carefully I would still find a change of evidence in the conspiracies that could be covered by further investigation, and on that account there would be missing links in the chain of evidence which, in order to make complete reports, should be secured.

Mr. MADISON. Did you make a partial one?

Mr. GLAVIS. Yes, sir; I made a partial report.

Mr. MADISON. You made a partial report, which was all the department asked of you at that time, but they told you to go ahead and not stop your investigation. Now, did you go ahead?

Mr. GLAVIS. Yes, sir; I kept on, but just then they wired me that the Cunningham group intended to come under the old law and that immediate hearings would follow, which prevented my doing anything more on it, and I protested against that because I wanted to get in these field examinations of the Cunningham claims before proceeding with the work.

Mr. MADISON. Did they say to you to stop any investigation on the Cunningham group?

Mr. GLAVIS. No, sir; they did not say that, but they said hearings would follow immediately.

Mr. MADISON. What was meant by hearings?

Mr. GLAVIS. That is the taking of testimony, regular trial of the case between the Government and the claimants.

Mr. MADISON. Before whom?

Mr. GLAVIS. Well, ordinarily it is before the register and receiver of the United States Land Office, but they stated that in order to save time and expense that they were going to have a special commissioner from the General Land Office.

Mr. MADISON. Did they have that; did they have a commissioner to take testimony?

Mr. GLAVIS. Yes, sir; they did, but before that the testimony was not commenced until along in October or November, because my telegrams and communications explained these incidents a little more thoroughly than I do.

Mr. MADISON. To get it straightened out, there has been a mass of testimony here, and I am asking you these questions in order to get a connected story—

Mr. GLAVIS. Then I protested against it, and said I could not consistently proceed without this further investigation was completed before the hearing had commenced. They sent a special agent named Sheridan out to take charge of the cases finally and to conduct the hearing.

The CHAIRMAN. He was a lawyer, was he not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. He was a lawyer and had been engaged before that time in coal-land prosecutions for the Government?

Mr. GLAVIS. He told me he had had some experience. He had been in the service about a year.

The CHAIRMAN. Do you not know as a matter of fact that he had?

Mr. GLAVIS. No, sir; I do not know except what he told me. He had been in the service about a year, and I guess he had had a little bit of experience.

The CHAIRMAN. He was a lawyer by profession, was he not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Did he have the hearing; did he take the testimony?

Mr. GLAVIS. He went over the evidence then.

The CHAIRMAN. The committee want to understand whether he was put in charge under Sheridan; that he was sent out there and was put in charge and you were still to continue in the work with Sheridan.

Mr. GLAVIS. Oh, yes, sir.

The CHAIRMAN. You were not taken off from the work?

Mr. GLAVIS. Oh, no, sir. He was put in charge to proceed with the hearings as they directed me to proceed, and I protested against it.

The CHAIRMAN. Protested against his being put in charge?

Mr. GLAVIS. No, sir; protested against proceeding with the hearings before the field examinations were made.

The CHAIRMAN. How long were you associated with Mr. Sheridan in that work?

Mr. GLAVIS. Mr. Sheridan arrived there about July 21, and I remained about five or six days. He reviewed the evidence, and after going over the evidence very carefully he made a report to the commissioner concurring in my recommendations and recommending that they wait until the field examinations were made.

The CHAIRMAN. Then there was nothing in the conduct of Sheridan that would induce you to believe that he took any other view of the cases than you had done?

Mr. GLAVIS. He took the same view of the case that I did.

The CHAIRMAN. So that the Government was not put in any jeopardy because he was put at the head of it instead of your remaining at the head of it?

Mr. GLAVIS. No, sir; not upon that case.

Mr. GRAHAM. Why did you consider—

The CHAIRMAN. Was it not shortly after that time—after Sheridan was put at the head of the work—that it occurred to you to apply to Pinchot to introduce you to the President and see him, and that it occurred to you that it was dangerous that these claims should go to patent?

Mr. GLAVIS. No, sir. I protested against having hearings in the Cunningham cases on July 16, 1909, to the Forest Service; Mr. A. C. Shaw was the law officer of the Forest Service in Washington, D. C.—by telegram of July 17 they put Sheridan in charge of the case.

The CHAIRMAN. Was it not that fact that rather alarmed you and made you apply to Mr. Pinchot for assistance to put you in touch with the President?

Mr. GLAVIS. No, sir; there were a great many things that alarmed me beside that. That did not worry me very much.

Mr. GRAHAM. Why did you consider the field examination so necessary that you thought the hearing ought to be delayed until after it was made?

Mr. GLAVIS. Well, we had documentary evidence showing the expenditures made by the different coal claimants; showing each one expended an equal amount. We had also secured the affidavits of a majority of the entymen which admitted that they had this unlawful understanding. My ideas of the proper conduct of the hearings was to supplement the evidence we secured by a field examination on

the ground, showing that the workings of the 33 claims were done with one intention, that of mining the coal for the benefit of all the claimants equally, and I felt that when we had that evidence we could make a *prima facie* case from that, together with the introduction of the Cunningham journal, which had the agreements and understanding of the different claimants, and the record evidence showing that these improvements had been made by the several entrymen for the benefit of all.

The CHAIRMAN. Now, Mr. Glavis, let me call your attention to—

Mr. GLAVIS. Mr. Chairman, I had not finished.

The CHAIRMAN. Well, go on.

Mr. GLAVIS. Then the *prima facie* case had been made, and in order to have been made it would have been necessary for the claimants to have gone on the stand. We could then have used the affidavits which they had previously made in impeaching any testimony which they might give contrary to the statements made heretofore, and I thought it would have made the case much stronger to have done that than to have had, as we would have had to have done, if we had not made a field examination—to have relied upon making a *prima facie* case by calling the claimants themselves as our witnesses, I felt that the Government's case would be much stronger.

The CHAIRMAN. Now, Mr. Glavis, listen to me. Let us understand the procedure. Now, in the ordinary course, this testimony would have been taken before the register and receiver; your *ex parte* affidavit would not have been testimony there; you could only use them for the purpose of seeing whether the claimants testified differently in that hearing from what they had in your affidavits—is not that so?

Mr. GLAVIS. Why, at the hearing which they would have had the Government would introduce these affidavits as their own testimony in order to make out a *prima facie* case.

The CHAIRMAN. They did that by stipulation before the commissioner.

Mr. GLAVIS. Well, I suppose it was by stipulation.

The CHAIRMAN. Now, the regular course would have been to have taken all this testimony about these claims before the register and receiver, would it not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. But a stipulation was entered into by which a commissioner was appointed to go about the country and take testimony where the different claimants lived—was not that the case?

Mr. GLAVIS. Yes, sir; and that the Commissioner of the General Land Office would make the first decision.

The CHAIRMAN. Instead of the register and receiver?

Mr. GLAVIS. Yes, sir. That was a new practice to me; I never heard of any request for it before. Heretofore they always went to the Land Office.

The CHAIRMAN. Was not that to avoid the necessity of having the claimants come to the local land office at Juneau, Alaska?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Was not that for the convenience of the claimants, so that their testimony could be taken by this commissioner at the residence or near the residence where the different claimants lived?

Mr. GLAVIS. No, sir; that was not the apparent reason, because, under the rules of practice relating to the conduct of hearings, the

claimants have the right to have their testimony taken within the county in which they live. The Government has the same right. They can not subpoena a witness outside of the county in which he lives.

Mr. MADISON. This was a proceeding to determine the question of the validity of these entries, was it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. In which the Government was on one side and the entrymen on the other?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. They had made their proof before the register and receiver and had obtained their receipts. That is right, is it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And they wanted their cases to proceed to patent, and you had protested and said that they ought not to receive patents. That is right, is it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Then a proceeding was instituted to determine the question whether or not they were entitled and should receive the patents, and you were a special agent authorized to collect evidence to determine whether or not the Government had a case against these entrymen. That is true, is it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And you collected the evidence, and you felt that you had not yet obtained all the evidence which you thought you ought to have, and which the Government ought to have, in order to safely go to trial—that is the proposition, is it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And that you ought to make further investigations and follow further lines that were suggested to you by your examinations before the Government could safely enter into the hearings—that was your proposition, was it not?

Mr. GLAVIS. Yes, sir; I felt that the more evidence we had the safer we were.

Mr. MADISON. Now, then, it was a question of judgment with you, and your superiors differed with you as to whether or not you had enough evidence to safely proceed to hearing—was that the situation? I want simply to get the facts.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. They said you have enough and you said that we have not enough, and then they proceeded to send out a commissioner to take the testimony?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. I understood you to say that Mr. Sheridan agreed with you?

Mr. GLAVIS. Yes, sir. Before they sent the commissioner they sent another special agent to go over the case; he took charge and proceeded with the hearing.

Mr. MADISON. And he also said that further evidence was necessary—that is, you ought to make further examination and obtain further evidence?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. To make your case stronger before you proceeded to hear it?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Now, that is the situation?

Mr. GLAVIS. Yes, sir. And that evidence which I wanted to get I could only get during the summer months on the ground.

Mr. MADISON. You had obtained the evidence, so far as the testimony of witnesses was concerned, in the one group, the Cunningham cases. All the evidence that could be obtained along that line you had already obtained?

Mr. GLAVIS. Yes; practically all. There might have been one or two people from whom I should have liked to secure affidavits.

Mr. MADISON. There was but one thing needed to complete the Cunningham cases for the Government, and that was to investigate the land; go to the land and investigate and determine the manner in which they were improving their claims, whether jointly or separately. That is the proposition?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And as to the Cunningham cases, you were saying to your superiors that there should be no hearings until there was a field examination. Is that right?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Could they not have gone ahead with the hearings before the commissioner? The commissioner was simply to take testimony; he was just the same as a notary public. He didn't have any power to pass upon the facts; he simply reported this testimony to the Commissioner of the General Land Office, did he not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Well, they could have gone ahead and taken that testimony and later on have made the examination in the field, could they not?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Mr. Madison, I call your attention to the fact that this was a sort of continuing operation; if the Government had gone ahead and taken these depositions it would not have ended the cases; the Government could still hold it open after that.

Mr. MADISON. That was what I was asking him about.

Mr. GLAVIS. The Government had to make a prima facie case first; that was the whole point. And in order to make a prima facie case, without the Government calling the entrymen themselves, we had to have this field examination and the documentary evidence—putting both together would make a prima facie case.

Mr. MADISON. All I am trying to do is to simply get, in a perfectly kindly and sympathetic way, your position and the facts of the matter. Now, this was a proceeding before the Commissioner of the General Land Office. If it had a title as a legal proceeding, it was something like this: "Before the Commissioner of the General Land Office, in the matter of the application of so and so for patents, or in the matter of protest against the issuance of patents, in the Cunningham coal cases." It was a proceeding before the Commissioner of the General Land Office, and in order that evidence might be taken and brought before him, they, in effect, to use common parlance, took depositions.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And this commissioner that went out was simply a commissioner to take depositions as we understand it in ordinary parlance?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Now, then, they might have taken any number of depositions and filed them up here, but that did not mean that the commissioner need to have examined them—I mean the Commissioner of the General Land Office—or had a final hearing until all the evidence that everyone on each side wanted to bring out was brought before him. Isn't that it?

Mr. GLAVIS. It was a little different from that.

Mr. MADISON. Tell me why.

Mr. GLAVIS. It was more like a civil case in the United States courts, where they have a referee to take the testimony. It has to be conducted just like you would conduct a court case. Instead of taking the testimony first of the one side or the other, the Government has to make its case first, in order to make it necessary at all for the claimants to put in any testimony. If we could not make a prima facie case, the case could be dismissed right there; they could rest.

Mr. MADISON. In the making of this prima facie case there was not any definite time fixed in which it had to be concluded in order to make a prima facie case?

Mr. GLAVIS. No, sir.

Mr. MADISON. In other words, they could have gone ahead and taken this testimony, or these depositions, because it would have amounted in legal effect to that, and during the progress of the taking of the depositions or even after that, they could have sent to Alaska and had an investigation made of the land, and had the persons who made the investigation testify as a part of the Government's case. That could have been done, could it not?

Mr. GLAVIS. Yes, sir; it could in a way. But I think you perhaps will fully understand the situation by reading, on page 43, the report of Mr. Sheridan to Mr. H. H. Schwartz, dated July 27, 1909.

The CHAIRMAN. What page?

Mr. GLAVIS. Page 43.

Mr. GRAHAM. Let me ask you this question first: Would it have been necessary for you to attend the hearings personally?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. While the hearings were going on, could the field work be going on also?

Mr. GLAVIS. Yes, sir; it could. But we wanted to put the field work in first.

Mr. GRAHAM. Who had the power to fix the time when the testimony for the Government should be all put in?

Mr. GLAVIS. The commissioner.

Mr. GRAHAM. Had you any assurance whether he would extend that time indefinitely, after having taken the testimony, or whether he would close it in a reasonable time?

Mr. GLAVIS. No; but they would usually give the Government plenty of time. But the trouble is we didn't have any testimony, as I believed it, proper to put in evidence until the field examination was made. In my opinion that was the first thing that should go in.

Mr. GRAHAM. What could be gained by the Government in beginning its case until it was ready to put in all, or practically all, its testimony?

Mr. GLAVIS. Nothing could be gained from either side. The other side would not start putting in their evidence until we had rested our case.

Mr. DENBY. Did not the Cunningham affidavits and papers constitute a prima facie case—the papers you had already gathered?

Mr. GLAVIS. Yes, sir; they did. But I felt that instead of introducing those affidavits, if we could make a prima facie case without those affidavits, that we had those to rely on in impeaching and cross-examining the entrymen when they would go on in defense.

Mr. OLMSTED. What are the months in which the field examinations can ordinarily be made in Alaska?

Mr. GLAVIS. July, August, and September. The elevation of these claims is, I think, over 5,000 feet.

Mr. OLMSTED. When was the field examination made of the Cunningham claims?

Mr. GLAVIS. In July and August.

Mr. OLMSTED. Of what year?

Mr. GLAVIS. 1909.

Mr. OLMSTED. 1909?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. The examination, then, that you suggested, the field examination, has been made in these Cunningham claims?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. What alarmed you last summer when you laid this matter before the President was that the Government was proceeding to consider these claims before that field examination had been made? Was that what alarmed you?

Mr. GLAVIS. No, sir; that was not the only thing that alarmed me. The testimony that I have given, taken in connection with the other testimony that I have not given as yet, alarmed me.

Mr. MALISON. If the chairman is through, I should like to ask you one more question. You said a moment ago that the field examination ought to have been the first testimony introduced.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And that was your reason for protesting about going out and taking these depositions?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And that you thought the field examination ought to have been made first?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. That was your idea about that—why?

Mr. GLAVIS. I wanted to put in the field examinations, showing the joint workings of the claimants, for the mutual benefit of each claimant, and then we would introduce the Cunningham journal, which showed the memorandum of the agreement, in Cunningham's own handwriting, that they were to consolidate. Then the journal further showed that each one expended the same amount of money for the joint workings of the claims. And upon that showing, together with the other documentary evidence we had—circular letters to different claimants and reports of the other experts—a very strong prima facie

case was made, in my opinion; and we had all these affidavits of what the claimants would rely on for use in cross-examination.

Mr. MADISON. You thought the first material fact was to show that they were working them in common, and that could only be determined by a field examination?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And it was a matter of judgment between you and the officers—at least in conclusion—they concluded differently from you; they thought that the first thing to do—at least they acted along that line—was to have the testimony of these witnesses taken before the field examination?

Mr. GLAVIS. The office did, until after Mr. Sheridan had made his report concurring in my recommendations.

Mr. MADISON. Then they followed your recommendations?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. You stated, in answer to Judge Madison, in regard to an inquiry about the Cunningham claims, whether all the affidavits had been procured which you expected to secure, that they practically were all procured. Were there any further affidavits that you were expecting to get?

Mr. GLAVIS. There was a Mr. Hawkins, who was the coal expert who made the reports for the Cunningham claimants. He was in Alaska—said to be in Alaska—and I wanted Mr. Kennedy to get an affidavit from him and interview him.

Mr. BRANDEIS. When he should go there?

Mr. GLAVIS. Yes; when he was up there making the field examination, to see him. I also wanted Mr. Kennedy to get any evidence that he could from the people who had worked for Cunningham or might have some knowledge that the claims were being handled as an association's instead of as an individual claim.

Mr. JAMES. Who made this field examination in 1909 of the Cunningham land?

Mr. GLAVIS. Mr. Andrew Kennedy, special agent of the General Land Office.

Mr. JAMES. What was his report?

Mr. GLAVIS. His report showed—well, it showed the main tunnel, that the main tunnel had been made.

Mr. JAMES. Were they working this jointly?

Mr. GLAVIS. Yes; that was his report.

Mr. JAMES. He got the proof you wanted to go there to get?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. That, you thought, would make a prima facie case for the Government?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Is that Exhibit 13 introduced?

Mr. BRANDEIS. Yes, sir.

Senator FLETCHER. Page 43?

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. Proceed, Mr. Brandeis.

Mr. BRANDEIS. I am going to introduce that and a large number of other letters together. Now, there are also a few letters that we think ought to be introduced just about at this time, which appear

on page 513. They are the three letters—the memoranda. One is the letter of Miles C. Moore to Secretary Ballinger of April 9, 1909. The CHAIRMAN. That is admitted.
(The letters reads as follows:)

THE BAKER-BOYER NATIONAL BANK.

Established 1869.

Referring to your letter of—

WALLA WALLA, WASH., Apr. 9, 1909.

Hon. R. A. BALLINGER,

Secretary Department Interior, Washington, D. C.

DEAR SIR: The purpose of this letter is to inquire concerning the status of certain coal-land entries in Kayak district, Alaska, more especially concerning that one made by myself.

Although quite anxious to secure patent, I have refrained from writing you until you should have time to become established in your new position. As Commissioner of G. L. O. you were afforded an opportunity to familiarize yourself with everything pertaining to these entries and to discover irregularities, if any existed. It will therefore not be necessary to rehearse the six years of strenuous effort and of hardships endured by our agent to perfect the title to these lands. So far as my knowledge extends, every step has been taken under the direction of competent counsel, supplemented by careful and intelligent effort to comply with the law in letter and in spirit. While believing that the administration was actuated by what it conceived to be the best policy for the whole people, I can not help feeling it has imposed a hardship, not to say an injustice, on the enterprising people who were lured to Alaska by promises contained in the Federal Statutes. This refers, of course, to the former administration, which I think failed to carry out the provisions of the statutes relating to Alaska coal lands in refusing patents in entries made prior to the order of withdrawal. It is hoped and confidently expected that the present one will be distinguished for a fairer interpretation and a higher respect for law. Kindly give me such information as you can, consistently.

You will realize, I think, that any considerable delay will mean the loss of another summer's work in development and another year's delay in getting the coal to the markets on the Pacific coast, where it is badly needed. Furthermore—pardon me for saying—the Government itself is most vitally interested in hastening the development of these coal mines, as it is the only coal suitable for the navy on the Pacific side.

Very sincerely,

(Signed)

MILES C. MOORE.

The CHAIRMAN. What is the next?

Mr. BRANDEIS. And the next is the memorandum from Mr. Carr to Mr. Schwartz, at the bottom of the page, of April 14, 1909.

The CHAIRMAN. That is admitted.

(The memorandum is as follows:)

THE SECRETARY OF THE INTERIOR,

Washington, Apr. 14, 1909.

Mr. SCHWARTZ: The entry to which Gov. Moore refers as "his" is one of the Cunningham group, I think.

Please send me a note as to how the matter stands. Is Glavis doing anything on Alaska coal matters, or is everything "up in the air," as it was some time ago.

(Signed)

CARR.

The CHAIRMAN. What is the next?

Mr. BRANDEIS. And the next is a letter of Dennett to Miles C. Moore of April 20, 1909.

The CHAIRMAN. On the same page?

Mr. BRANDEIS. All on the same page.

The CHAIRMAN. That is all admitted.

(The letter reads as follows:)

P-HHS

APRIL 20, 1909.

HON. MILES C. MOORE,
Walla Walla, Washington.

MY DEAR GOVERNOR: Your letter of the 9th instant to the department asking for the status of coal entries in the Kayak district, Alaska, and more particularly about the entry made by yourself, and now pending, has been referred to me for reply.

The office has, within the current month, received a detailed report from the field as to the status of the various coal entries referred to, and the matters disclosed in said report preclude action on the entries at this time. The further work necessary, by reason of the information now in the possession of the office, will be concluded within the next sixty days, and at that time the record will be in such shape that the entries will be acted upon in this office.

Respectfully,

FRED DENNETT,
Commissioner.

CWN.

Mr. JAMES. Just right there. This letter, signed by Carr, to Mr. Schwartz says:

The entry to which Judge Moore refers as "his" is one of the Cunningham group, I think.

Please send me a note as to how the matter stands. Is Glavis doing anything on Alaska coal matters, or is everything "up in the air," as it was some time ago?

Who is Carr?

Mr. GLAVIS. He is the private secretary of Secretary Ballinger.

Mr. JAMES. Was he writing this note to Schwartz as the secretary of Secretary Ballinger?

Mr. GLAVIS. That I could not say, except what it shows there itself.

Mr. GRAHAM. Is it official correspondence?

Mr. JAMES. That is the point.

Mr. GLAVIS. It is placed in the record as such.

Mr. JAMES. In the ordinary run of duties of the secretary to the Secretary of the Interior, was it his official duty to inquire about this matter for himself in his line of duty or at the direction of the Secretary of the Interior?

Mr. GLAVIS. I don't know that I could answer that question as to what Mr. Carr's duties were. I would have only my own ideas and views about that.

Mr. JAMES. The letter directed to Secretary Ballinger by Mr. Moore—is this letter from Carr to Schwartz relative to that letter from Ballinger to Moore of April 9, 1909?

Mr. GLAVIS. The record just speaks for itself.

The CHAIRMAN. Well, I suppose Mr. Glavis is no better able to judge of that than we are.

Mr. JAMES. I thought I might inquire; he has had long experience in this work, and I thought he might perhaps be better informed than we are.

Mr. GLAVIS. On page 514 the statement there appears that it was. In the second paragraph, on page 514, it says:

The last and foregoing letter from Commissioner Dennett to Governor Moore, of date April 20—

That refers to the letter on page 513.

Mr. OLMSTED. It is very plain that it does, for in the letter of Miles C. Moore, on page 513, he says: "More especially concerning that one made by myself;" and then Carr says: "The entry to which Governor Moore refers as 'his' is one of the Cunningham group, I think." They have relation to each other.

Senator FLETCHER. Do you know whether it was one of the Cunningham group or not?

Mr. GLAVIS. Yes; it was; it does belong to the Cunningham group.

The CHAIRMAN. Proceed, Mr. Brandeis.

Mr. BRANDEIS. Now, Mr. Glavis, you have stated, in describing what you had done in the way of getting testimony, that you came to Washington. Was that also in the course of getting evidence, or was it for other purposes?

Mr. GLAVIS. No; I came to Washington to get evidence, and also to discuss with the office what I had accomplished up to that time.

The CHAIRMAN. You came here to get evidence?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. What evidence did you come here for?

Mr. GLAVIS. I came principally to interview a Congressman who was interested in a coal claim in the Green group; I wanted his affidavit; and there were one or two other claims that I wanted affidavits about.

Mr. BRANDEIS. What else was there that you wanted to take up in Washington?

Mr. GLAVIS. I wanted to have fully determined whether the evidence that I had secured up to this time would be considered, as I stated in my reports of March, 1909, was my view of the law.

Mr. BRANDEIS. What did you have particular reference to?

Mr. GLAVIS. I believed that all these coal entrants, which were not bona fide entrants and did not come within the meaning of the bona fide entries under the act of May 28, 1908, could not have the benefits of such act.

Mr. BRANDEIS. Now, was that a subject on which there had been some discussion?

Mr. GLAVIS. Yes; we had discussed that quite a bit.

Mr. BRANDEIS. I think before I ask the witness any further questions I should introduce—the chairman introduced yesterday the act of May 28, 1908, which appears in the record, at page 706. I want to introduce in connection with that—

The CHAIRMAN. What page?

Mr. BRANDEIS. The act appears on page 706 that was introduced yesterday at your suggestion.

The CHAIRMAN. Yes.

Mr. BRANDEIS. Then, on page 219 is the memorandum of H. H. Schwartz of July 19, 1908; it runs from page 219 to 221; and it is the memorandum of Mr. Schwartz construing the act, as you will see; the same way, as a matter of fact, that Mr. Glavis said that he had construed it in his report of March 23.

The CHAIRMAN. That was admitted in evidence.
(The memorandum is as follows:)

STATEMENT BY H. H. SCHWARTZ, CHIEF OF FIELD SERVICE.

[Alaska coal-land act, May 28, 1908. Analysis of the act and suggestions as to departmental circular to be issued as to corporations.]

First proposition.—The act applies to "all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal lands" in their own interests prior to November 12, 1906, or in accordance with departmental circular.

There are two parts to this first proposition, to wit: (a) Prior to the enactment of this legislation qualified persons, heirs or qualified assigns, could enter lands. This act does not consider any others. It follows that this act applies only to qualified persons, their heirs, or qualified assigns of qualified, (b) persons who have made locations in good faith in their own interest.

This cuts out alike the impecunious dummy who permits the mere use of his name for a small money consideration and the shrewd promoter or speculator who located with intent to unload upon a stock company or corporation at a fancy price. To stretch the act to include either of these classes is to go beyond its words entirely and give a form of relief to Alaska speculators never intended by Congress.

It follows, to my mind, that the only persons who can invoke this law are such qualified persons as on May 28, 1908, held coal claims properly and lawfully located prior to November 12, 1906.

Second proposition.—This sets forth what the above persons may do under this law. To quote the act, such persons "may consolidate their said claims or locations." The act does not say that claims heretofore unlawfully consolidated are confirmed, nor does it say that heretofore consolidated claims may proceed to patent.

The act continues, "and for this purpose (for the purpose of consolidating) such persons, their heirs or assigns (the qualified holders of coal claims lawfully located prior to November 12, 1906) may form associations or corporations."

The act says "may form" (not that corporations heretofore formed and having unlawfully taken by purchase or contract unpatented coal claims), which corporations or associations "may perfect entry," etc.

The act then gives the following proviso:

"*Provided*, That no corporation shall be permitted to consolidate its claims under this act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska."

The proviso is in no way descriptive of the corporation, but merely declares what stock must be held by qualified persons at date of consolidation. The claims are consolidated at the time of transfer to the corporation; the corporation may be formed "for the purpose" of consolidating these claims.

Manifestly no corporation could, prior to passage of this act, be lawfully formed for the purpose of consolidating different Alaska coal claims into one for the purpose of entry and patent.

In view of the foregoing it is my opinion that the regulations to be issued, so far as they relate to corporations, should cover points indicated in the following tentative paragraph:

"A corporation applying to enter consolidated claims under this act must, with its application to enter, file a duly certified copy of its articles of incorporation and by-laws and the sworn statement of its president and secretary, or other managing officer, showing (1) that said corporation was organized since May 28, 1903, for the purpose of consolidating and entering the coal claims of its incorporators: (2) that the original locator, his heir, or duly qualified assignee of each coal claim consolidated is an incorporator in said corporation; (3) that at date of such incorporation and date of transfer of said claim to said corporation the locator, his heir, or duly qualified assignee was the lawful owner of such claim, as shown by the records of the proper local land office, or by proper abstract of title where heirship or lawful assignment is not a matter of land office record; (4) that such owner at time of consolidation of each claim consolidated has received and now owns stock in said corporation in amount pro-

portionate to the then value of his claim; (5) that for the purpose of consolidation such claims were transferred to said corporation upon the dates as shown in each case in said affidavit, and upon said dates at least seventy-five per centum of the capital stock of said corporation was owned by persons qualified to enter coal lands in Alaska, as shown by the included schedule of stockholders and holdings.

"There should also be filed with each corporate or association application an affidavit from the original owner, heir, or assignee of each claim showing said claim was located in good faith by said person in his own interest, and not in the interest of, for the benefit of, or at the request of, or as employee or agent of, any other person, firm, or corporation, and that the said claim was so held by said locator, heir, or lawful assignee until the date when transferred to said corporation; that said transfer was for the purpose of permitting affiant to consolidate said claim with others under the act of May 28, 1908; that affiant shall also show the capital stock of said corporation, the number of shares by him received for his claim, and that he holds said shares unencumbered, and that said shares represent the true value of said claim at date of said transfer; that by means of said ownership in such stock and his rights as stockholder in said corporation said affiant expects in good faith to engage in the business of mining coal and to reap a profit from the mining of coal from said consolidated claims."

Respectfully,

H. H. SCHWARTZ.

Later in the fall of 1908 there was organized in the departments a sort of board of cooperation, and in the hopes of getting in the circular an amendment which would require such an initial showing on the part of claimants as would disclose the real situation, or at least furnish my agents with a basis upon which to acquire it, I did, on December 16, deliver to Mr. Woodruff the following additional memorandum:

DECEMBER 16, 1908.

MY DEAR MR. WOODRUFF: Query:

First. Does the act of May 28, 1908 (Public 151), validate * * * entries theretofore rendered fraudulent by unlawful transfer to some corporation?

Second. Does it provide that corporations created prior to May 28, 1908, and on that date unlawfully holding assignments of pending coal locations and entries, are cured of their fraud and may consummate their crimes by final proof and patent?

Third. Or does it provide that corporations may be after May 28, 1908, created for the purpose of consolidating entries lawfully existing on that date?

Fourth. Should not the regulations of July 11, 1908, specifically require consolidations to show (a) when the corporation was created; and (b) what is in its charter; and (c) when it first acquired its coal claims, etc., along the line of my memorandum submitted to you when the regulations were up for promulgation?

I submit this inquiry in no spirit of criticism of the regulations, except that I feel that we need every ounce of power to prevent Alaska frauds which will, by comparison, make past land frauds appear as petit larceny.

We have pending about 500 coal entries; every man on the coast who knows anything knows the Guggenheims do and will control the coal situation unless at once forestalled; the act of May 28, 1908, limits its consolidation benefits to entries already made (Guggenheim and two or three other corporations), and so shuts out future competition. Exhibits show the coal in from 20 to 80 feet width blankets of clear coal. The 500 entries have, say, 80,000 acres. At 10 cents a ton on 20-foot vein, the royalty alone is \$160,000,000.

Suppose in five or ten years Guggenheim shall have acquired control of these lands? Will it be charged to Secretary Garfield and Commissioner Dennett? And will Congress be able to say—as it can in the timber and stone act—that the department has taken the first paragraph of the act of May 28, 1908, and in effect changed "may consolidate" to "who have heretofore consolidated;" and when the act says that for the purpose of consolidating (bona fide claims) persons "may form * * * corporations" we have in effect said that corporations heretofore formed, and having heretofore consolidated claims by taking unlawful assignments, may now make final proof and get a patent unless a special agent can jimmy into the inner consciousness of these entrymen and compel them to admit, in words, they were dummies from the first?

I know of no way to judge the future except by the past, and in the light of my experience the land office has no more important task than to protect

the Alaska coal fields and the men who will be held accountable for their proper protection.

I suggest the committees on cooperation take up this question and ascertain whether more stringent regulations are warranted as to Alaska coal land laws.

Yours, truly,

H. H. SCHWARTZ,
Chief of Field Service.

Mr. BRANDEIS. Then you will find, on page 657 of the record, the further report of Mr. Swartz, dated December 16, 1908.

The CHAIRMAN. To Mr. Woodruff?

Mr. BRANDEIS. To Mr. Woodruff. Who was Mr. Woodruff, Mr. Glavis?

Mr. GLAVIS. He was the Assistant Attorney-General of the Interior Department at that time.

The CHAIRMAN. That is admitted.

Mr. BRANDEIS. I think it would be valuable to read a part of that report of Mr. Schwartz's (reading):

First. Does the act of May 28, 1903 (Public, 151), validate entries theretofore rendered fraudulent by unlawful transfer to some corporation?

Second. Does it provide that corporations created prior to May 28, 1908, and on that date unlawfully holding assignments of pending coal locations and entries, are cured of their fraud and may consummate their crimes by final proof and patent?

Third. Or does it provide that corporations *may be*, after May 28, 1908, created for the purpose of consolidating entries lawfully existing on that date?

Fourth. Should not the regulations of July 11, 1908, specifically require consolidations to show (a) when the corporation was created, and (b) what is in its charter, and (c) when it first acquired its coal claims, etc., along the line of my memorandum submitted to you when the regulations were up for promulgation?

That is the memorandum of July, just put in evidence (continuing to read):

I submit this inquiry in no spirit of criticism of the regulations, except that I feel that we need every ounce of power to prevent Alaska frauds which will, by comparison, make past land frauds appear as petit larceny.

We have pending about 500 coal entries; every man on the coast who knows anything knows the Guggenheims do and will control the coal situation unless at once forestalled; the act of May 28, 1903, limits its consolidation benefits to entries already made (Guggenheim and two or three other corporations), and so shuts out future competition. Exhibits show the coal in from 20 to 80 feet width blankets of clear coal. The 500 entries have, say, 80,000 acres. At 10 cents a ton on 20-foot vein the royalty alone is \$160,000,000.

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I know of no way to judge the future except by the past, and in the light of my experience the Land Office has no more important task than to protect the Alaska coal fields and the men who will be held accountable for their proper protection.

I suggest the committees on cooperation take up this question and ascertain whether more stringent regulations are warranted as to Alaska coal-land laws.

Yours, truly,

H. H. SCHWARTZ,
Chief of Field Service.

The CHAIRMAN. Mr. Brandeis, do you desire to advise Secretary Garfield about the law on this matter?

Mr. BRANDEIS. I have no desire except to submit the facts in the case in the fairest way before your committee.

The CHAIRMAN. I want to state for your information that at the time when this law was passed Mr. Garfield was Secretary of the Interior, and I was chairman of the Committee on Public Lands, if I recall it correctly, and Secretary Garfield sent us a letter recommending this very legislation. Senator Flint, who is here, I think, had charge of the bill and reported it. Am I correct, Senator Flint?

Senator FLINT. You are right, Mr. Chairman.

The CHAIRMAN. So this legislation met with the approval of Secretary Garfield, and did not come from Secretary Ballinger.

Mr. BRANDEIS. I think, Mr. Chairman, I ought, in view of your inquiry, to make my own statement. I have no fault—and I do not know that anyone who is associated with me has any fault—to find whatever with the act of May 28, 1908, as it has been—

The CHAIRMAN. I make these remarks because I do not want you to convey the impression that that law was passed for the purpose of helping these people to secure these coal lands.

Mr. BRANDEIS. I am convinced that it was not passed for that purpose, as it was passed and as it has been construed; but the very construction—as it will appear later that what Mr. Schwartz was fighting against and what Mr. Glavis was fighting against was the construction that would have resulted in just the things that Mr. Schwartz was pointing out, if there had not been the intervention of Mr. Glavis, as I think it will now appear.

The CHAIRMAN. Let me ask you, was not that the construction that came from Mr. Woodruff, who was the attorney-general of the Interior Department during Mr. Garfield's administration?

Mr. BRANDEIS. The construction, I understand, that we are contesting and that Mr. Glavis was contesting was the construction of Assistant Secretary Pierce, which he had succeeded in having overruled by Attorney-General Wickersham. And it is the facts in that connection which I was about to ask him in regard to.

The CHAIRMAN. Was not that decision, as a matter of fact, gotten up and prepared in the law division under Mr. Woodruff?

Mr. BRANDEIS. No; I understand not. I think the facts will fully appear in the testimony that Mr. Glavis is about to give.

Mr. MADISON. Was not the Pierce decision some months later than this letter of December 6, 1908?

Mr. BRANDEIS. The Pierce decision was dated May 19, 1909. There had been no construction up to that time; the matter was under discussion, and Mr. Glavis desired to know what would be the ultimate construction placed by that office upon that act. Certain persons, including Mr. Ballinger, were contending for the construction, or had indicated that they favored the construction, which Assistant Secretary Pierce afterwards put upon the act. It was that construction which Mr. Glavis was protesting against, and which Mr. Schwartz had previously protested against in that very strong statement which I have introduced.

The CHAIRMAN. Mr. Brandeis, let me ask you this, for my information. You are more familiar with the record than I am. Is there

anywhere in this book, or anywhere else that you know of, any response on behalf of Mr. Woodruff to this letter of Mr. Schwartz's?

Mr. BRANDEIS. Yes; I think there is.

The CHAIRMAN. If there is, I would like to have it put in at this time.

Mr. BRANDEIS. I think I can turn to it in a few minutes.

Mr. MADISON. While Mr. Brandeis is looking for that letter, I should like to ask you a question or two, Mr. Glavis. When was it that you were here in the process of that investigation for the purpose of taking the testimony of some persons here?

Mr. GLAVIS. I arrived here about May 16, 1909—last year.

Mr. MADISON. For the purpose of taking testimony here in Washington?

Mr. GLAVIS. Getting affidavits; for the purpose of collecting evidence.

Mr. MADISON. And you say that you were here for the purpose of taking testimony—getting the affidavit of some Member of Congress?

Mr. GLAVIS. Yes, sir; as well as of a number of other people.

Mr. MADISON. Who was a claimant in one of these groups?

Mr. GLAVIS. He became interested in 1906 in the Green group.

Mr. MADISON. Who was it?

Mr. GLAVIS. Congressman McLachlan, of Pasadena, Cal.

Mr. MADISON. What group?

Mr. GLAVIS. He was interested in the Green group.

Mr. MADISON. Did you obtain his affidavit?

Mr. GLAVIS. No, sir.

Mr. MADISON. Did you interview him?

Mr. GLAVIS. No, sir.

Mr. MADISON. You did not see him?

Mr. GLAVIS. No; I did not see him.

Mr. MADISON. Why did you not get his affidavit, the same as of any other citizen?

Mr. GLAVIS. Well, Mr. Ballinger said during a conference in May—I think it was May 16 or 17 when I told him about it—he said there had been too much of that kind of thing in the past, and he said, "I wouldn't see him;" so I did not see him.

Mr. MADISON. That you would not see him?

Mr. GLAVIS. That is, using his words. He said: "I wouldn't see him, if I were you." He said there had been too much of that kind of thing in the past.

Mr. MADISON. He told you not to see him?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And you did not?

Mr. GLAVIS. No, sir; I did not see him.

The CHAIRMAN. Mr. Brandeis, let me call your attention in this connection, there seems to be something bearing on it on page 656; there is a letter there from Mr. Woodruff that I would like to call your attention to; and then at the foot of that letter is a note, a memorandum signed by Barclay. I would like to know who Barclay is.

Mr. BRANDEIS. You say on page 66?

The CHAIRMAN. It is on page 656. There is a brief letter there, in the middle of the page, from Mr. Woodruff.

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. That has some bearing, and I think that it should come in in that connection.

Mr. BRANDEIS. It is dated January 25, 1909, and is from Woodruff to Dennett.

I am inclined to think there is one other reference to that, too.

The CHAIRMAN. In connection with the note, Mr. Brandeis, can you or Mr. Glavis tell me who Mr. Barclay is whose name is appended to the note on page 657?

Mr. BRANDEIS. Do you know who Mr. Barclay is, Mr. Glavis?

Mr. GLAVIS. I do not think I do. No; I do not know.

Mr. BRANDEIS. There is another communication, Mr. Chairman, that might be put in.

The CHAIRMAN. My secretary informs me that Barclay is one of the law clerks in the Assistant Attorney-General's office.

Mr. BRANDEIS. There is another letter that I think should be put in evidence.

The CHAIRMAN. I would suggest here, Mr. Brandeis, that this letter from Woodruff and this note go in at this point.

Mr. BRANDEIS. Certainly. I so understand that it goes in evidence here.

(The letter and note are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, January 25, 1909.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. DENNETT: Could you and Mr. Schwartz meet with us Tuesday, February 2, about this question of Alaskan coal regulations? I suggest 11 o'clock, since the Secretary will not need us after that hour.

If regulations concerning evidence of coal deposits in withdrawn or classified land are not completed by that time we will take that question up, too.

Very truly, yours,

G. W. WOODRUFF,
Assistant Attorney-General.

NOTE.—The general question, presented in four queries in the accompanying memorandum, was considered and discussed at the time the regulations of July 11, 1908, were framed, and purposely avoided for the practical difficulties it presented.

It may be conceded that the tense of the particular provisions of the first section of the act of May 28, 1908, relative to the formation of corporations to take over Alaskan coal lands, etc., seems to import the subsequent organization of such corporations. At the same time it is a doubtful practical question, I think, whether such lands should have been taken over by corporations then existing or thereafter organized for that purpose.

In so far as entries "theretofore rendered fraudulent by unlawful transfer to some corporation" are concerned, it may be borne in mind that they are "fraudulent" only because not in accordance with the law at the time they were made; but if they could be so made thereafter under the new law, all substantial objection to them would seem to have been removed.

With respect to the suggested monopoly of these coal lands, experience in practically all fields of enterprise apparently has been that the ultimate result is the same whether the case is one of concentrated or single ownership, or otherwise, since "gentlemen's agreements" seem to accomplish for all practical purposes all that unity of ownership can do.

However that may be, an effective and satisfactory remedy ought to be found in the broad and drastic provisions of the third section of the act of May 28, 1908. (Barclay.)

Mr. BRANDEIS. I was going to suggest one other thing which should go in in this connection; it is the letter of Woodruff to the commissioner dated December 29, 1908, on page 169, Exhibit 18.

The CHAIRMAN. The letter on page 169 is admitted.

Mr. BRANDEIS. Perhaps it might be well to read that letter; it is not very long, Mr. Chairman.

The CHAIRMAN. Very well.

Mr. BRANDEIS (reading):

EXHIBIT XVIII.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL.
Washington, December 29, 1908.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. DENNETT: Will you please have Mr. Schwartz, in conjunction with Mr. Finney or Judge Witten, prepare a suggested modification of the regulations concerning "consolidation" of coal locations in Alaska along the lines suggested to me by Mr. Schwartz. We will then take them up carefully in cooperation. Personally, I am pleased beyond measure to notice officials using the foresight and forethought expressed in Mr. Schwartz's fears concerning the effect of the regulations. I agree with him thoroughly that it is up to us all to protect the Secretary and you from criticism that you fall short of grasping the full meaning of the "consolidation" act, and that by so doing you give to any person, corporation, or trust the monopoly of coal in Alaska. It may be nothing can be done under the law, but I would like to see Mr. Schwartz prepare suggested modification of the regulations in order that, if legally possible, it may be adopted.

The CHAIRMAN. The rest of the letter does not relate to this matter.

Mr. BRANDEIS (reading). "Signed G. W. Woodruff." There is also, I think, proper to be inserted in this connection, the letter of Dennett, commissioner, to the Secretary of the Interior, dated January —, 1909; it appears on page 170. It also should come in evidence in this connection.

The CHAIRMAN. That is admitted.

(The letter reads as follows:)

EXHIBIT XIX.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January —, 1909.

The Honorable SECRETARY OF THE INTERIOR.

SIR: I have your communication of the 29th instant, in reference to the matter of Mr. Schwartz's recommendations that the circular of July 11, 1908, Alaska coal lands, be modified particularly as to entries by corporations, and necessary showing to be made thereunder.

Briefly stated, it is the opinion of Mr. Schwartz that the act to encourage the development of coal deposits in Alaska, approved May 28, 1908, is not retrospective; that it is a radical departure from the law existing prior to its enactment, and that it does not by its terms, either expressly or impliedly, cure or confirm any entries which prior to its passage were subject to cancellation for fraud; that the act is intended to, and does, provide a method by which persons, who prior to November 12, 1906, had in good faith, and in their own interests, made coal entries, might on or after May 28, 1908, consolidate their claims or locations; and for that purpose they might on or after May 28, 1908, form "associations or corporations" to perfect such entries; and that any corporation or association which prior to the passage of the act in question had fraudulently secured the making of or unlawful assignment of coal entries would not be permitted to consummate such fraudulent and unlawful proceedings solely by reason of the act of May 28, 1908.

Early in July, 1908, when the regulations in question were under consideration, Mr. Schwartz submitted a short analysis of the act, and suggested that the following paragraphs be included in the regulations, to wit:

"A corporation applying to enter consolidated claims under this act must with its application to enter file a duly certified copy of its articles of incorpo-

ration and by-laws, and the sworn statement of its president and secretary, or other managing officer, showing (1) that said corporation was organized since May 28, 1908, for the purpose of consolidating and entering the coal claims of its incorporators; (2) that the original locator, his heir or duly qualified assignee of each coal claim consolidated is an incorporator in said corporation; (3) that at date of such incorporation and date of transfer of said claim to said corporation, the locator, his heir or duly qualified assignee was the lawful owner of such claim, as shown by the records of the proper land office, or by proper abstract of title where heirship or lawful assignment is not a matter of land office record; (4) that such owner at time of consolidation of each claim consolidated has received and now owns stock in said corporation in amount proportionate to the then value of his claim; (5) that for the purpose of consolidation such claims were transferred to said corporation upon the dates as shown in each case in said affidavit, and upon said dates at least 75 per cent of the capital stock of said corporation was owned by persons qualified to enter coal lands in Alaska, as shown by the included schedule of stockholders and holdings.

"There shall also be filed with each corporation or association application an affidavit from the original owner, heir or assignee of each claim, showing said claim was located in good faith by said person in his own interest, and not in the interest of or for the benefit of or at the request of or as employee or agent of any other person, firm, or corporation, and that the said claim was so held by said locator, heir, or lawful assignee until the date when transferred to said corporation; that said transfer was for the purpose of permitting affiant to consolidate said claim with others under the act of May 28, 1908; that affiant shall also show the capital stock of said corporation, the number of shares received by him for his claim, and that he holds said shares unincumbered, and that said shares represent the true value of said claim at date of said transfer; that by means of said ownership in such stock and his rights as stockholder in said corporation said affiant expects in good faith to engage in the business of mining coal and to reap a profit from the mining of coal from said consolidated claims."

The above recommendation was at the time of its submission considered by myself and members of the board of law review, who were engaged in preparing a tentative form of regulations under the new Alaska coal-land law.

After consideration of all the different suggestions and recommendations I then prepared and submitted for your approval a copy of regulations meeting with my approval, and I attach hereto such a copy, together with the memorandum by me submitted as to the facts and conclusions upon which my regulations were based. In so far as the regulations submitted refer to entries by corporations they were as follows:

"A corporation applying to enter a consolidated claim must show at date of application to enter that the original locators, their heirs, or the qualified assignees, through whom the title of the corporation to the claim was derived, each own and hold such an amount of stock in the corporation as to indicate good faith in the formation of the corporation and the intention of the incorporators to retain a substantial interest in the corporation. Each application must also be accompanied by a list of the stockholders, showing their corporate holdings and the qualification to enter coal lands in Alaska, by personal affidavits, of those holding 75 per cent of the capital stock. Applications by corporations must be signed by the president and secretary of the applicant corporation and attested by the corporate seal. All applications may be made upon Form 3-307, modified to suit conditions."

As I recall, the regulations, as submitted by me, were with the regulations finally adopted and sent to the Secretary while he was investigating public-land conditions in the West. The original recommendation by Mr. Schwartz, the tentative form of regulations as finally submitted by me to the department, together with the recent correspondence are herewith submitted, and I agree in the suggestion of Judge Woodruff that it will be well to present this whole subject to the committees on cooperation, for the purpose of considering the objections to the present regulations as passed by the chief of the field service, and also whether the regulations as adopted are as stringent against prior fraudulent entries as the law will warrant.

Very respectfully,

FRED DENNETT,
Commissioner.

Mr. BRANDEIS. Before I ask you to state fully what the conversation was and what you did in Washington, perhaps in connection with Judge Madison's question it might be well for you to say whether or not after Secretary Ballinger had made this statement about interviewing the Congressman, you discussed it with any other official of the Government.

Mr. GLAVIS. Yes, sir; I told it to Mr. Henry M. Hoyt, whom I have referred to before, of Porto Rico.

Mr. MADISON. Who is he?

Mr. GLAVIS. The attorney-general of Porto Rico at present.

The CHAIRMAN. He is an Assistant Attorney-General in the Department of Justice, is he not?

Mr. GLAVIS. No; that is his cousin. They have the same initials.

Mr. BRANDEIS. Will you state, Mr. Glavis, going back to the time when you arrived in Washington, what you did with reference to the Alaska coal cases in Washington? In the first place, when did you arrive, as nearly as you can fix the time?

Mr. GLAVIS. As I recall it, I arrived about May 16, 1909, and I met Mr. Schwartz at the Land Office and I told him all that I had done, the evidence I had collected, the character of the evidence, and how we were getting along, and who were becoming involved in the investigation. After telling him all about it, we went down and saw Mr. Dennett, and shortly after that I went over to see the Secretary, by appointment, and had a conference with the Secretary.

Mr. JAMES. You refer to Mr. Ballinger?

Mr. GLAVIS. Yes, sir. That was the last of May, and we discussed—

Mr. BRANDEIS. Who is "we?"

Mr. GLAVIS. Mr. Dennett, Mr. Schwartz, and myself; also Judge Ballinger. He listened more to what we had to say than anything else.

Mr. BRANDEIS. Were you all four there together?

Mr. GLAVIS. We were all four at the conference, and I told the Secretary, also, just in a general way, as to what I had done, and we discussed the rules and regulations, and how they were going to construe that act of May 28, 1908, that had not been definitely construed since Schwartz had taken it up in December or January, the year before—I do not know just when it was—and I gave my views, and those expressed by Mr. Schwartz were the same; we had the same opinion on that subject. Mr. Dennett thought that entrants who had these agreements should have the benefits of this act of May 28, 1908. He also said that he thought there was no use of rendering an opinion as to the act until after I had completed my reports. I felt that I should have the right to know how they were going to construe the act before proceeding further with my investigation, because, as I stated: "If you take the view as expressed by Mr. Dennett, there will be no use of further investigating a great many of the claims, because I know what the evidence is now in a general way, and I know that we can not get any stronger evidence."

Mr. DENBY. Did Mr. Dennett say that he thought the act was intended to admit even claimants where the claims were made prior to the preparation of the statement?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Admit all, even if there were agreements?

Mr. GLAVIS. Yes; if they had some interest in the land; if there were nothing but dummies, they should have the benefit of the act.

The CHAIRMAN. He thought that dummy entrymen were not entitled to the benefit of the act?

Mr. GLAVIS. Yes, sir. To explain the meaning of dummy entrymen—people who had just made a coal filing for \$5 or \$10—he thought that people that had this understanding, like the Green group and the Hunt group and those that I investigated, should be allowed to consolidate.

Mr. JAMES. Would that apply to the Cunningham group?

Mr. GLAVIS. Yes, sir; that applied to the Cunningham group just as well as to the others.

The CHAIRMAN. There were a few in the Cunningham group that were dummies, were there not?

Mr. GLAVIS. There were a few who were carrying some dummy claims for a while.

The CHAIRMAN. That is what I thought.

Mr. GLAVIS. Mr. Ballinger, after hearing us, concluded that there should be an opinion rendered at that time. He agreed with me that if the law was as Mr. Dennett viewed it, there was no use of going to the expense of making further investigations of these claims. So he told Mr. Schwartz and me to prepare a letter for his signature, to the Attorney-General, setting forth the facts and asking for an opinion. He said if we would prepare that and bring it over he would send it to the Attorney-General. I think it was late that same afternoon that Schwartz and I prepared a letter. Schwartz dictated the letter, setting up three statements of the facts and the evidence.

Mr. BRANDEIS. Just a minute, before you go further. Is the letter that appears in the record on page 672 the draft of the letter which you and Schwartz prepared?

Mr. GLAVIS. Yes, sir. Schwartz and I prepared this letter, all except the fourth statement which we asked to be decided; that I inserted in the letter after it was written, the next day, before sending it over to the Secretary.

Mr. BRANDEIS. Why did you insert that?

Mr. GLAVIS. Well, because I thought these others might not entirely cover all the facts, and this was especially covered, in my opinion—the understandings existing among the Cunningham group and the Hunt group and the Green group, as I recall it now, and I wanted all the facts covered in this letter.

Mr. DENBY. What was his opinion about the fourth paragraph—if they had a verbal agreement to operate on a share and share alike, and this intent to convey a corporation?

Mr. GLAVIS. As Judge Hanford stated in the Portland Coal and Coke Company case it was unlawful, and as the evidence was similar in the Cunningham group and those others to the evidence in the Portland Coal and Coke case, I wanted that decided; I thought it was unlawful.

Mr. DENBY. Even if they were properly qualified entrymen?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Being the holders, and operating for their own benefit?

Mr. GLAVIS. It was not solely for their own benefit.

Mr. DENBY. I am merely taking the language of the fourth stipulation, that they were operating for their own benefit, but sharing the expenses. If so, you would still hold that it was illegal?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. There is a word left out.

Mr. GRAHAM. It should read "two or more entrymen."

Mr. GLAVIS. Yes, I guess that is a mistake.

Senator FLETCHER. That is the same letter as on page 16.

The CHAIRMAN. Mr. Glavis, this was referred by the department of the General Land Office to the Assistant Attorney-General and submitted to Secretary Pierce.

Mr. GLAVIS. No, sir; I sent that letter over to the Secretary's office—to Mr. Ballinger's office.

The CHAIRMAN. What I mean is, after you had sent that letter, the department referred it to the Assistant Attorney-General or to Secretary Pierce.

Mr. GLAVIS. Yes. The way that was—the next day after we wrote the letter or the same day I sent that letter over to the Secretary's office—I was called over to the Interior Department and notified that Mr. Pierce wanted to see me. I went in to see Mr. Pierce, and he said that Mr. Ballinger had turned over the matter to him for an opinion and that he had stated he did not want to have anything further to do with it, owing to his having represented some of the Alaska coal claimants, and that he had turned the matter over to him; that they would write the opinion there; that they would not send it over to the Department of Justice.

The CHAIRMAN. In this connection, inasmuch as there is no other evidence on the other side, we will have to look into this matter and justify Secretary Pierce, who has been drawn into the question here, and I ask the committee to turn to page 180, which gives the history of this matter and shows Assistant Secretary Pierce's connection with it.

Mr. BRANDEIS. That is Assistant Secretary Pierce's statement?

The CHAIRMAN. That is his statement. He says here:

This paper—

That is the paper of submission—

was sent over to the department and turned over to the office of the assistant attorney-general for the department. Mr. F. W. Clements, first assistant attorney-general, was then acting as assistant attorney-general in the absence of Mr. Oscar Lawler, the Assistant Attorney-General for the Interior Department. Mr. Lawler was then in California. Mr. Clements and Mr. Finney prepared the paper dated the 19th day of May, placing a construction upon the act of May 28, 1908. Mr. Glavis was present at the time this paper was prepared. (See Mr. Clements's statement, pp. 88-92.)

I think that refers to those pages referring to the first written statement. I am not able to locate it in this book.

Senator FLETCHER. Mr. Pierce is available, isn't he?

The CHAIRMAN. Mr. Pierce signed this decision that was prepared by these two gentlemen.

Senator FLETCHER. I understand it. You are reading from some statement made by Mr. Pierce. I should think it would be better to have him here.

Mr. BRANDEIS. Will you tell just what happened there, Mr. Glavis. You were just stating that you were called over to the Assistant Sec-

retary's office, Mr. Pierce's office. Now just state what happened there.

Mr. GLAVIS. After I had seen Mr. Pierce and he had told me this, he further stated that Mr. Clements was then preparing the opinion, and I did go into Mr. Clements's office while he and Mr. Finney were preparing the opinion.

Mr. BRANDEIS. Who is Mr. Finney?

Mr. GLAVIS. They used to call him, when I was in the service, the confidential man of Secretary Ballinger. I do not know what his title is.

Mr. BRANDEIS. Go on.

Mr. GLAVIS. And they were discussing that opinion, and they asked my views when I came in. I said, "You all know what my views are, because I have discussed them before." I said: "My opinion is that the act never intended that claims that were fraudulent should be allowed to be patented; I didn't think Congress intended to validate fraudulent entries," is the way I put it. I said my views are stated in those reports I sent in in the spring.

The CHAIRMAN. You substantially agreed with Mr. Schwartz, then?

Mr. GLAVIS. Yes, sir. And Mr. Clements dictated that opinion which appears next, at the bottom of page 16.

Mr. BRANDEIS. I will introduce in evidence now Secretary Pierce's opinion, on page 16.

The CHAIRMAN. I would suggest that in connection with it we also put in Secretary Pierce's letter, commencing on page 207 and ending on page 209, bearing upon the same question, in connection with this letter of the 19th.

Mr. BRANDEIS. You refer to the letter of August 30, 1909?

The CHAIRMAN. Yes; commencing on page 207 and ending on page 209—a letter by Secretary Pierce.

Mr. McCALL. That is by F. W. Townsend.

The CHAIRMAN. No. It is signed by Clements. I was mistaken about that. It ends on page 208.

Senator FLETCHER. You mean the letter written by Clements?

The CHAIRMAN. Yes; in connection with the decision of the Secretary that you have inserted in the record. They will both go into the record.

(The opinion and letter are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, May 19, 1909.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to your recent request for instructions relative to unperfected coal-land entries within Alaska, made by qualified persons prior to the passage of the act of May 28, 1908 (35 Stat., 424), concerning which you report that under varying conditions arrangements had been entered into looking to the transfer and consolidation of the entries into groups in order to secure such acreage as would warrant the economic development of the groups, and that application is now being made to perfect said entries under said act, I have to advise you that the act of May 28, 1908, was a curative act and should be liberally construed so as to further the object intended to be advanced by said legislation, namely, the consolidation of coal claims in Alaska, initiated prior to November 12, 1906, through means of associations or corporations, so as to permit of the acquirement of title to contiguous locations, not exceeding 2,560 acres.

There are, of course, conditions respecting the qualifications of the persons constituting the association or corporation making the consolidated entry, its length, etc., with respect to which your inquiry has no relation. It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely that technical objection might have been raised as to the good faith in the claimant or

entryman because of the understanding, arrangement, or agreement contemplated or entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908. With respect thereto I am of opinion that to so limit the scope and purpose of the act of 1908 as to refuse the privilege of perfecting such claims under its liberal provisions solely because of such previous arrangement or agreement is unwarranted, and that in passing upon entries sought to be perfected under the act of 1908, where the only objection thereto is an arrangement or agreement of the character specifically described in your letter, the same might and should be accepted and passed to patent.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, August 30, 1909.

HON. FRANK PIERCE,
First Assistant Secretary of the Interior.

The facts and circumstances surrounding the preparation of the paper initialed by Mr. Finney and myself which you signed May 19, 1909, instructing the commissioner relative to coal-land entries within Alaska, under the act of May 28, 1908 (35 Stat., 424), are as follows:

The matter was originally submitted by the Commissioner of the General Land Office in the form of a proposed letter, addressed to the Attorney-General, requesting his opinion as to whether entries of coal lands in Alaska might "be completed and patent issued, in cases where the law had been complied with, except for some one of the following irregular or illegal agreements or conditions pending May 28, 1908:

"1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land and issuance of a cash certificate, the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

"2. A contract conveying said lands to a company or corporation, in which the entryman had or expected to receive stock in payment for the lands.

"3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of March (May) 28, 1908, by consolidating the said claims or locations so made.

"4. A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike."

Said proposed letter was first handled by Mr. Finney, who had prepared a memorandum thereon. Upon review thereof I was of opinion that there was no necessity for submitting the matter to the Attorney-General, and therefore treated the same as a request for instructions, which were given in the letter of May 19, 1909, signed by you and before referred to.

Upon informal inquiry at the General Land Office I learned that the matter was submitted at the instance of Chief of Field Division Glavis, who, at my request, called upon me for consultation and was present in my room with Mr. Finney when I dictated the instructions to the General Land Office. I am not certain, but as I now recall, Mr. Glavis was requested to wait until they were written out by the stenographer, and that I permitted him to take a copy for consideration over night; that he called upon me the next day, at which time, after further talk, the final draft was made and submitted to you.

Lands in Alaska are unsurveyed, and claim to coal lands in the Territory must be initiated by actual location, which is accomplished by marking the boundaries on the ground and opening a mine. Within one year after making such location the locator must file for record and also with the register and receiver of the land district notice containing the matters recited in the statute. Within three years from the date of such notice patent may be obtained by presenting application therefor with the land officers, accompanied by plat of survey of the land and payment of \$10 per acre. It is this latter proceeding which constitutes the "entry" and is entirely distinct from the "location" previously described. It was in this light that I considered and understood the inquiries in the letter above set out, there being no reference therein to any contract or agreement made prior to location, it being, as I understood it, confined to circumstances occurring after location, but before entry.

In my conversations with Mr. Glavis respecting the matter he several times referred to the Cunningham cases, with which I was not at all familiar, the same never having come before me for consideration in any form. With respect to individual cases

I informed him that the matters submitted were concrete questions of law involving the construction of the statute, which, while they would in a measure serve as a guide in disposing of all cases arising under the act, yet it was not the purpose of the department in these instructions to determine any given case. I did inquire of him, however, as I recall, as to whether he had under investigation any cases involving a charge that the original location was made in the interest or for the benefit of any other than the locator, and specifically stated to him that the inquiry did not involve any such case and that such a case, if it existed, was not within the contemplation of the instructions.

I can assure you that otherwise than as above stated no reference was ever made or any consideration given to the Cunningham or any other particular cases at the time these instructions were under consideration. As understood by me at the time the instructions were issued the matters presented were merely of this character: Whether locators of coal lands in Alaska, who, after location and prior to the passage of the act of 1908, entered into agreements with respect to the consolidation of their claims, which agreements, when made, were in violation of the act of 1904, and who were now desirous of perfecting their claims, either as individuals or as associations, could do so under the act of 1908, the question being whether such previous agreements barred them from the benefits of said later act. It was in this respect that the instructions stated:

It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely that technical objection might be raised as to the good faith of the claimant or entryman because of the understanding, arrangement, or agreement contemplated or entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908. With reference thereto I am of opinion that to so limit the scope and purpose of the act of 1908 as to refuse the privilege of perfecting such claims under its liberal provisions solely because of such previous arrangement or agreement is unwarranted, and that in passing upon entries sought to be perfected under the act of 1908, where the only objection thereto is an arrangement or agreement of the character specifically described in your letter, the same might and should be accepted and passed to patent.

Respectfully submitted.

F. W. CLEMENTS.

Mr. BRANDEIS. Now, Mr. Glavis, proceed. They asked you what your opinion of the law was, and you stated it.

Mr. GLAVIS. Then Mr. Clements dictated this opinion.

Mr. BRANDEIS. Of May 19?

Mr. GLAVIS. Yes, sir. That was sent over to the office—over to the Commissioner of the General Land Office.

Mr. BRANDEIS. You mean after it was signed by Assistant Secretary Pierce?

Mr. GLAVIS. Yes, sir. And I discussed it then with Mr. Dennett. Of course Mr. Dennett knew what my views were at that time and I knew his views. I told him I didn't think it was good law, and I didn't think it was right. Mr. Dennett said:

We have nothing to do; our hands are washed of any responsibility; all that you can do is to make out your reports in accordance with this decision.

At that time I felt, as I felt a little earlier in the spring, that things were not going very good, and I didn't think they were in good faith intending to cancel those Alaska coal cases, and I was about ready to resign. It was about two or three days after that when I met Mr. Henry M. Hoyt, who was attorney-general at Porto Rico. He happened to be in Washington, D. C., at that time. I told Mr. Hoyt about the circumstances and showed him the letter that we had prepared for the Attorney-General and the opinion of Mr. Pierce, explaining to him how Mr. Ballinger had agreed to send it to the Attorney-General, and then evidently changed his mind overnight, and I told him my views of the law, and I showed him my report on the Cunningham cases, which set forth—

Mr. BRANDEIS. You mean the report of March 23, which has been put in evidence?

Mr. GLAVIS. Yes, sir; that one, and I also gave him a copy of Schwartz's memorandum of July.

Mr. BRANDEIS. Of July, 1908?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. What was Mr. Hoyt at that time?

Mr. GLAVIS. He was attorney-general of Porto Rico. We had been connected in cases before.

Mr. DENBY. He just happened to be here in Washington on business?

Mr. GLAVIS. Yes, sir. We were always friendly, and I went to him for advice. I told him I thought I would resign. I had a couple of letters of introduction that Mr. Heney, of San Francisco, had given me, in case I needed them, about a month before, and I was going to resign and give it out to the public. He thought that—

Mr. DENBY. Pardon me. You were going to resign and what—

Mr. GLAVIS. Give the facts out to the press and the people. He said that would be an awful scandal for Mr. Taft's administration just after having come in as President, and he thought that would not be the best thing to prevent this, and in order to prevent this scandal and talk we discussed the best method to bring about a change in this opinion, because he had agreed with me that that opinion was not a good opinion at all. And he suggested that he would go up to New England—he was a personal friend of Horace Taft, who had a school up there, the President's brother—and he would go up there and see him, explain the situation to him, and get him to come down and see the President and have the President take some action and put a stop to it. We discussed this quite a bit more, and finally we came to the conclusion that we would not do that. What Mr. Hoyt desired then to do was to go to the Attorney-General and lay the matter before him and get his advice as to what to do; leave it to his opinion as to the best action to take. So Mr. Hoyt went on to the Department of Justice and had a conference with the Attorney-General.

Mr. BRANDEIS. Did he have any papers with him when he first went there?

Mr. GLAVIS. Yes, sir; he took with him the same papers I had given him and another paper also, because during that time I had prepared my report in accordance with this Pierce decision. They were writing me—they had written me a letter in the office asking me to make a report in accordance with that decision—and also every time I would see Mr. Dennett he would ask me whether I had made my report on the cases yet; so I couldn't hold off any longer. I had made my report, but I had not submitted it. I gave Mr. Hoyt a copy of that report. That is the report dated May 26.

Mr. BRANDEIS. It had not yet been rendered at that time. Was it a draft of the report?

Mr. GLAVIS. No; it had not been filed. It was about May 23 or 24.

Mr. DENBY. Is it in the book?

Mr. BRANDEIS. It was afterwards filed—dated and filed on the 26th. It appears on the record at page 40. We will read that letter.

The CHAIRMAN. Do you introduce that?

Mr. BRANDEIS. I thought we had the letter, because it was only a draft of this. It was not the report that he gave Mr. Hoyt.

Mr. GLAVIS. No; it was the same thing as this. I had not dated it yet; I had already prepared it.

Mr. BRANDEIS. What were the papers that Mr. Hoyt had when he went to see the Attorney-General, Wickersham?

Mr. GLAVIS. Mr. Hoyt had a copy of this report.

Mr. BRANDEIS. You mean the report of May 26—of your report.

Mr. GLAVIS. Yes, sir. He took that because it covered the situation, and it also covered the letter which we had prepared to go to the Attorney-General, and the Pierce decision under that letter. He also had a copy of my report on the Cunningham cases dated in March.

Mr. BRANDEIS. March 23, which we have already put in evidence?

Mr. GLAVIS. Yes, sir. And he went up there and explained the situation to him.

The CHAIRMAN. Were you with Mr. Hoyt at that time?

Mr. GLAVIS. No, sir. I went the next day.

The CHAIRMAN. You quote this information from him, then?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Had you received a letter of May 24, on page 17, from Mr. Underwood?

Mr. GLAVIS. Yes, sir; I had received it just about that time; I think it was May 24 that Mr. Hoyt went to see the Attorney-General, or May 25; any way Mr. Hoyt went there and discussed the matter with the Attorney-General, and left with him, at the Attorney-General's request, these papers which I had given Mr. Hoyt to take up, and he told Mr. Hoyt he would go carefully into the matter.

Mr. BRANDEIS. That is, the Attorney-General told Mr. Hoyt?

Mr. GLAVIS. Yes, sir. I saw him that evening and he told me. He said to me he had looked over the papers that Mr. Hoyt had left, and considered the matter, and that he would state to Mr. Ballinger at a Cabinet meeting that I had been to see him and had explained to him the fact that Mr. Ballinger was disqualified from acting in the making of the opinion, and that I thought the matter was of such importance that a Cabinet officer should render the opinion, and he would ask Mr. Ballinger to refer the question of law to him for an opinion.

The CHAIRMAN. What day was this, as nearly as you can tell?

Mr. GLAVIS. I think it was May 25 or May 26.

The CHAIRMAN. Six or seven days after the Pierce opinion?

Mr. GLAVIS. Well, it was four or five or six days after that opinion. My daily report I think will show. I had several conferences with the Attorney-General first before that in regard to the Oregon land-fraud cases, and it was my last conference with the Attorney-General that that conversation took place; and I think when we get our daily reports I can give you the exact date. I am not sure, but I think they will show it.

The CHAIRMAN. At any rate, it was within a week or so.

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And it was on the same day of the Cabinet meeting, whatever day that was?

Mr. GLAVIS. Yes. I remember that day distinctly, because he was about ready to go when I saw him. Nothing further took place. That is the last time I saw the Attorney-General with reference to

the Alaska coal cases and nothing took place until about May 27 or May 28, when Mr. Ballinger sent for me. I think it was the day after, or two days after this interview with the Attorney-General, that Mr. Ballinger sent for me, and his private secretary, Mr. Carr, was typewriting or had some typewritten copies of letters on his desk, and Mr. Ballinger told me to look at them. I glanced at one letter, which was a letter from ex-Governor Moore to Mr. Ballinger in reference to the coal cases and it expressed their disappointment in not having received the patents. The letter is in the record here; I would not want to try to quote it, because it speaks for itself.

Mr. BRANDEIS. I will introduce the letter later, as soon as you get through.

Mr. GLAVIS. He also told me that the Attorney-General had spoken to him about my visit to him, and that he was then preparing to send over to the Department of Justice the matter for an opinion.

The CHAIRMAN. With a request for an opinion on the subject?

Mr. GLAVIS. Yes, sir. He said, "In the meantime, Glavis, I would not submit your report on the Pierce decision." I said, "Judge, I have already filed my report in accordance with the Pierce decision." And he said, "Well, withdraw it until we hear from the Attorney-General." And I did withdraw the report that I had filed the day or two days before.

Senator FLETCHER. That is Exhibit No. 11?

Mr. BRANDEIS. Perhaps it would be better at this time to introduce these various communications.

Mr. MADISON. What page is the report on?

Mr. BRANDEIS. Page 40.

The CHAIRMAN. Do you want to put in this report that you have referred to?

Mr. BRANDEIS. Yes. I was going to put in first the letter of May 24, which appears on page 17 of the record. Let me ask just one question in regard to that. Had you, Mr. Glavis, been requested orally to present your report before you got this written request?

Mr. GLAVIS. Oh, yes. I had several conferences with Mr. Dennett. He said, "Go ahead and submit the report."

Mr. BRANDEIS. Was this request put in writing? Did you ask that it be put in writing?

Mr. GLAVIS. I asked Mr. Underwood, who is the assistant chief of the field division, to write me a letter about it and transmit the opinion, and he did.

Mr. BRANDEIS. That is, you asked for a written request of it after you had been orally requested; you wanted a record of it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. On page 40 is the report which was made and withdrawn at Secretary Ballinger's request.

(The report is as follows:)

EXHIBIT 11.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,

Washington, D. C., May 26, 1909.

The COMMISSIONER, GENERAL LAND OFFICE,

Washington, D. C.

SIR: By your letter of December 20, 1907, you directed me to take up the investigation of the fraudulent entry and acquisition of coal lands within the district of Alaska.

As a result of an examination of the records of the Juneau (Alaska) land office, the filings and entries were classified into groups, under the names of the agents making such filings, my theory being that each group represented a separate conspiracy to violate the law. These groups are as follows:

Brown, Bushnell, Chezum, Christopher, Cunningham, Doughton, Dunn, Foster, Green, Hartline, Hunt, Jester, Kelley, McAlpine, McHenry, Mackey, Morrow, Rathbone, Simmonds, Smith, Stracey, Thurston, Wells, Willoughby, and Young.

In compliance with your telegram of March 10, I submitted reports relative to each group on dates prior to April 1, which reports are of record in your office.

The Cunningham is a characteristic group, and reference is here made to my report of March 23, 1909, thereon, submitting evidence which shows that the coal declaratory statements in said group were filed subject to an agreement that upon title being perfected to the individual claims of 160 acres each the entryman was to deed such claim to a company to be formed for the purpose of developing and marketing the coal and receive stock in said company in payment; Cunningham, the agent in this case, to receive one-eighth of the stock issued to each entryman.

As a result of a conference on May 17, 1909, with the honorable Secretary, yourself, and the Chief of Field Service, the Secretary directed that a letter be prepared for his signature to the Attorney-General, setting forth the general facts and requesting an opinion as to whether or not the filings involved were unlawful in view of the act of May 28, 1908. Pursuant thereto, the following letter was prepared and submitted to the department:

MAY —, 1909.

THE ATTORNEY-GENERAL.

SIR: Under date of May 28, 1909, Congress passed an act entitled "An act to encourage development of coal deposits in the Territory of Alaska."

At the date of the passage of this act there were pending in the various land offices in Alaska unperfected coal entries in which payment had not been made and cash certificate had not been issued. These entries were made by persons qualified to make entries under the general coal-land laws. In a great many cases entrymen had, under varying circumstances, contemplated making, contracted to make, or had actually made transfers of the entries or agreements to transfer these entries to companies or corporations. The general proposition sought to be effected by these transfers was to consolidate the entries into groups in order to secure such acreage as would warrant the mining of coal upon an extensive and permanent basis. Application is now being made from time to time that certain of the entries above referred to and pending on March 28, 1908, be now accepted, cash price received, and entries permitted to go to patent under the terms of this act.

This department would be pleased for your official opinion as to whether these entries can be completed and patent issued in cases where the law has been complied with, except for some one of the following irregular or illegal agreements or conditions pending May 23, 1908:

1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land and issuance of a cash certificate the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

2. A contract conveying the said lands to a company or corporation, which company or corporation now offers to make cash entry under the act of March 28, 1902, by consolidating the said claims or locations so made.

4. A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

Respectfully,

_____, Secretary.

The matter was considered by the department, and on May 19, 1909, you were advised as follows:

MAY 19, 1909.

THE COMMISSIONER GENERAL LAND OFFICE.

SIR: Referring to your recent request for instructions relative to unperfected coal-land entries within Alaska, made by qualified persons prior to the passage of the act of May 28, 1909 (35 Stat., 424), concerning which you report that under varying conditions arrangements had been entered into looking to the transfer and consolidation of the entries into groups in order to secure such acreage as would warrant the methodical development of the groups, and that application is now being made to perfect said entries under said act, I have to advise you that the act of May 28, 1908,

was a curative act and should be liberally construed so as to further the object intended to be advanced by said legislation, namely, the consolidation of coal claims in Alaska, initiated prior to November 12, 1906, through means of associations or corporations, so as to permit of the acquirement of title to contiguous locations, not exceeding 2,060 acres.

There are of course conditions respecting the qualifications of the persons constituting the association or corporation making the consolidated entry, its length, etc., with respect to which your inquiry has no relation. It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely that technical objection might have been raised as to the good faith of the claimant or entryman because of the understanding, arrangement, or agreement contemplated or entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908. With respect thereto I am of opinion to so limit the scope and purpose of the act of 1908 as to refuse the privilege of perfecting such claims under its liberal provisions, solely because of such previous arrangement or agreement, is unwarranted, and that in passing upon entries sought to be perfected under the act of 1908, where the only objection thereto is an arrangement or agreement of the character specifically described in your letter, the same might and should be accepted and passed to patent.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

I am now in receipt of your letter of May 24, 1909, furnishing me copies of the two letters hereinabove quoted, and directing reports in view of said opinion.

I have the honor to report that my several reports on the groups of filings hereinbefore named set forth the general facts indicating the circumstances and the conditions under which such filings were made, and any further investigation would result only in an accumulation of evidence along the same lines and in support thereof.

As before stated, the Cunningham group may be taken as characteristic, and my report thereon sets forth fully the facts in connection therewith. A state of facts covering the Cunningham case having been contained in the letter hereinabove quoted submitted to the department, its opinion renders futile any further investigation of that and the similar groups hereinbefore mentioned. I will therefore make no further investigation of these filings unless instructed by you.

There are several other smaller groups and a few individual entries, concerning which the facts are, or may develop to be, different from those herein reported on, in which cases further investigation will be made and reports submitted.

There are 782 coal filings involved in the several groups, and the original papers heretofore furnished me are transmitted herewith.

Respectfully,

L. R. GLAVIS,
Chief of Field Division.

Senator FLETCHER. Get the witness to state that; ask him that question.

Mr. GLAVIS. Yes, sir; that is May 26, 1909.

The CHAIRMAN. That is the letter of submission to the Attorney-General?

Mr. GLAVIS. I quoted that letter of submission and also the Pierce decision in that report. They were nearly quoted in full.

The CHAIRMAN. Let me see if I understand that, Mr. Brandeis. Is that the letter of submission that Mr. Ballinger finally sent over to the Attorney-General calling for his opinion?

Mr. BRANDEIS. I understand that this was prepared before Secretary Ballinger sent anything over.

The CHAIRMAN. Yes; but I mean was that afterwards really sent over?

Mr. BRANDEIS. I understand it was not. What he actually did send does not appear in the record, but we have requested in our request of documents that that document be presented. It will be one that will be put in later.

Mr. COTTON. It appears here.

Mr. BRANDEIS. Where does it appear? Mr. Cotton says it does appear here. I did not find it.

Mr. COTTON. I will give you that page.

Mr. BRANDEIS. In the meantime, I will call your attention to page 42, in the third paragraph from the last, which reads [reading]:

As before stated, the Cunningham group may be taken as characteristic, and my report thereon sets forth fully the facts in connection therewith. A state of facts covering the Cunningham case having been contained in the letter hereinabove quoted submitted to the department, its opinion renders futile any further investigation of that and the similar groups hereinbefore mentioned. I will therefore make no further investigation of these filings unless instructed by you.

There are several other smaller groups and a few individual entries, concerning which the facts are, or may develop to be, different from those herein reported on, in which case further investigation will be made and reports submitted.

There are 782 coal filings involved in the several groups, and the original papers heretofore furnished me are transmitted herewith.

Respectfully,

L. R. GLAVIS,
Chief of Field Division.

¶ The CHAIRMAN. We will soon take a recess. What else do you want to put in?

Mr. BRANDEIS. Mr. Cotton has now found the paper that I thought was not in here.

Mr. GRAHAM. On page 673?

Mr. BRANDEIS. On pages 674 to 676.

The CHAIRMAN. It begins at the bottom of page 674. You had better offer in that connection the opinion of the Attorney-General.

Mr. GLAVIS. Yes, sir. That is at page 677.

The CHAIRMAN. It appears several times in this book, beginning on page 677. That is admitted.

(The letter and opinion are as follows:)

MAY 26, 1909.

The ATTORNEY-GENERAL.

SIR: The general coal-mining laws of the United States, as embodied in sections 2347 et seq., Revised Statutes, were extended to the district of Alaska by act of Congress approved June 6, 1900 (31 Stat., 658). No entries were made under its provisions, the principal reason being that entry under the sections specified is confined to surveyed lands, and the public surveys have not been extended to Alaska.

April 28, 1904 (33 Stat., 525), an act was passed amending said act of June 6, 1900, and providing a method for the surveying and patenting of coal claims in Alaska.

Section 4 of the last-mentioned act, however, provided that all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act should continue to be in force in Alaska.

A large number of locations of and applications for coal lands were made in Alaska under the provisions of these laws, and against many of them it was charged by special agents of this department that agreements had been entered into prior to entry. This condition arose partly from the fact that 160 acres, the maximum area enterable by an individual, was too small to constitute a workable coal mine, especially in Alaska.

May 28, 1908, Congress passed an act entitled "An act to encourage the development of coal deposits in the Territory of Alaska." Section 1 of said act permitted the consolidation of single claims, locations, or entries to include not exceeding 2,560 acres of contiguous lands and the entry of same by associations or corporations, with the condition that corporations applying for consolidated claims under the act must show that not less than 75 per cent of their stock is held by qualified entrymen.

This department has been asked whether entries may be completed and patents issued under said act of May 28, 1908, in cases where some one of the following irregular or illegal agreements or conditions existed on May 28, 1908:

1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land and issuance of a cash certificate the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

2. A contract conveying said lands to a company or corporation in which the entryman had or expected to receive stock in payment for the lands.

3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of May 28, 1908, by consolidating the said claims or locations so made.

4. A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

In the opinion of this department any of the agreements described in paragraphs 1, 2, and 3 above would constitute a violation of the general coal-land laws as extended to Alaska by the act of April 28, 1904. See in this connection decision of Circuit Judge Hanford in the case of *United States v. Portland Coal and Coke Company*, copy herewith; *United States v. Trinidad Coal Company* (137 U. S., 160); and *United States v. Keitel* (211 U. S., 370); but the view of the department, as expressed in letter to the Commissioner of the General Land Office May 19, 1909, is that the act of May 28, 1908, was a curative act, to be liberally construed, and that entries sought to be perfected under the act of 1908, where the only objection is an agreement of the character specified in the paragraphs quoted, may be accepted and passed to patent.

In view of the importance of the matter involved and that it may be authoritatively decided before entries are made and passed to patent under the act of 1908, I have the honor to request that you advise me upon the questions presented.

I inclose for your information and use in consideration of the matters (a) a copy of the coal-land laws and regulations thereunder, on pages 12 to 24, inclusive, of which will be found laws and regulations peculiarly applicable to Alaska; (b) copy of letter of First Assistant Secretary to the Commissioner of the General Land Office, dated May 19, 1909; (c) copy of decision of Judge Hanford hereinbefore described; (d) memorandum prepared in this office relative to construction of act of May 28, 1908.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

Acknowledgment dated June 12, 1909. Received June 15, 1909, and referred to Secretary.

FINNEY.

OPINION.

DEPARTMENT OF JUSTICE,
Washington, June 12, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt of your letter dated May 26, 1909, requesting my opinion on certain questions arising in your department in the administration of the coal-land laws in Alaska.

The general coal-land law is embraced in sections 2347 to 2352, inclusive, of the Revised Statutes. By the act of June 6, 1900 (31 Stat., 658), this law was extended to the district of Alaska. No locations or entries of coal land could be made under this legislation, however, as under said law entries must be made by "legal subdivisions," and the public surveys had not been extended over Alaska. Consequently, the act of April 28, 1904 (33 Stat., 525), amending the act of June 6, 1900, was passed, providing for locations upon and entries of unsurveyed coal lands in Alaska. The procedure under said act was similar to that prescribed by sections 2348, 2349, and 2350, Revised Statutes, for securing a preferential right to enter surveyed coal lands.

Section 1 of said act provides that qualified persons or associations " * * * who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska may locate the lands upon which such mine or mines are situated, in rectangular tracts. * * * And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same."

Section 2 prescribes the terms and conditions upon which locators may receive patents for the lands located by them at any time within three years from the date of the filing of the notice of location provided for in section 1.

Section 3 prescribes a method of settling all contests over conflicting claims to such lands, and section 4 provides:

"That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska."

Under this legislation the ordinary cash coal entry provided for by section 2347, Revised Statutes, could not be made, because the lands had not been surveyed. Coal entries in Alaska could be made only by securing the "preferential right" provided for by section 2348, Revised Statutes, by opening and improving one or more coal mines on the land sought. Under section 2349, Revised Statutes, claimants were required to file their declaratory statements with the register of the proper land office within sixty days after taking actual possession of, and commencing improvements on, the land. Under the act of April 28, 1904, locators were given one year "from making such location" within which to file notices of their claims, which notices must be filed both in the proper recording district and with the register and receiver of the proper land office. Under the act of 1904 locators were required to have their claims surveyed in a designated manner, which, of course, was not required under the general coal-land law. Under section 2350, Revised Statutes, claimants were required to make their application for patent, submit their proofs, and pay for the land within one year from the date of the filing of their declaratory statements. Under the act of 1904 claimants in Alaska were allowed three years from the date of their notices in which to have their surveys made, apply for patents, make their proofs, and pay for the land.

You state that a large number of locations of, and applications for, coal lands were made in Alaska under the act of April 28, 1904. Charges were made by special agents of your department that in many instances locators of, and applicants for, said lands entered into agreements, prior to entry, in violation of the provisions of the coal-land laws. November 12, 1906, an order was made withdrawing all lands in Alaska from entry, location, or filing under the coal-land laws. May 16, 1907, your predecessor issued instructions to the register and receiver of the land office at Juneau, Alaska (35 L. D., 572), providing, in paragraph 2, that all qualified persons or associations " * * * who had within one year prior to November 12, 1906, in good faith, made legal and valid locations under the act of April 28, 1904, may file notices of such locations;" and providing, in paragraph 4, that such persons " * * * who may have, in good faith, legally filed valid notices of location under the act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such persons, may make entry and obtain patent under such notice within the time and in the manner prescribed by statute, if they have not abandoned their right to do so."

Section 1 of the act of May 28, 1908 (35 Stat., pt. 1, 424), provides:

"That all persons, their heirs or assigns, who have in good faith, personally or by an attorney in fact, made locations of coal land in the territory of Alaska in their own interest, prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed two thousand five hundred and sixty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated and for this purpose such persons, their heirs and assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: *Provided*, That no corporation shall be permitted to consolidate its claim under this act unless seventy-five per centum of its stock shall be held by persons qualified to enter coal lands in Alaska."

You request my opinion whether entries may be completed and patents issued under said act of May 28, 1908, upon locations made prior to November 12, 1906, in cases where some one of the following irregular or illegal agreements, or conditions, existed May 28, 1908:

"1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land, and issuance of a cash certificate, the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporation in payment for the land.

"2. A contract conveying said lands to a company or corporation, in which the entryman had or expected to receive stock in payment for the lands.

"3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of May 28, 1908, by consolidating the said claims or locations so made.

"4. A verbal agreement by two or more entrymen made prior to the initiation of the entry, that upon issuance of patent, the entries would be consolidated and mined at the joint expense of each claimant, share and share alike."

The consummation of any of the agreements or contracts mentioned in the first three of the above-quoted paragraphs would have vested in one association or corporation the title to the lands embraced in several entries, a clear violation of section 2350, Revised Statutes, which provides that "the three preceding sections shall be held to authorized only one entry by the same person or association of persons." (U. S. v. Keitel, 211 U. S., 370, 387-391; U. S. v. Trinidad Coal Co., 137 U. S., 160.) The agreement described in the fourth paragraph is identical with the one involved in the case of U. S. v. Portland Coal and Coke Co., decided by the United States circuit court for the western district of Washington, October 5, 1908. In that case Judge Hanford said:

"If the scheme was not unlawful, each member of the combination would have a legal right to compel his fellow-members to hold each and every tract for the benefit of all, and to have an accounting of all profits derived from mining operations on each and every tract, although the legal title might be retained by the individual members in severalty. So that the object of the combination was to acquire coal land in excess of 320 acres for an association although the law fixes the maximum quantity of 320 acres."

In U. S. v. Trinidad Coal Co., *supra* (p. 167), the Supreme Court applied the following test:

"If the facts admitted by the demurrer had been set out in the papers filed in the land office, the patent sought to be canceled could not have been issued without violating the statute."

Likewise, if the facts in reference to any of the above-recited agreements and contracts had been set out in their proof papers when the locators came to make entry of their lands, patents could not have issued prior to the act of May 28, 1908, without violating the law. If these facts were set out in proof papers now, could patents lawfully issue under the provisions of the act of May 28, 1908?

Certain well-settled rules of statutory construction are applicable to the questions thus presented. A legislative act is to be interpreted according to the intention of the legislation apparent on its face. (U. S. v. Fisher, 109 U. S., 145.) "The intent of the lawmaker is the law." (Jones v. Guaranty, etc., Co., 101 U. S., 626.) "The meaning of the legislature constitutes the law." (Raymond v. Thomas, 91 U. S., 715.) "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar." (U. S. v. Goldenburg, 168 U. S., 102.) "The legal presumption is that the legislative body expressed its intention, that it intended what it expressed, and that it intended nothing more." (Johnson v. Southern Pacific Co., 117 Fed. Rep., 465.) "Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction." (Lake County v. Rollins, 130 U. S., 670.) "Indeed, the cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity, that an extended review of them is quite unnecessary." (Hamilton v. Rathbone, 175 U. S., 421.)

Under these rules there is little room for the construction of section 1 of the act of May 28, 1908. It is therein "expressed in plain and unambiguous terms" that all persons, their heirs or assigns, who have in good faith made locations of coal lands in Alaska, in their own interest, prior to November 16, 1906, or in accordance with the circular issued by your predecessor May 16, 1907, may consolidate their claims or locations by including in a single claim, location, or purchase not to exceed 2,560 acres. And in order to promote such consolidation the statute permits the formation of associations or corporations with the requirement that at least 75 per cent of the stock of such corporations must be held by persons qualified to enter coal lands in Alaska. The operation of said act is clearly limited to locations made prior to November 16, 1906, the date of the withdrawal order above mentioned. It is also clear that its benefits can be shared only by those persons who made coal-land locations in good faith and in their own interest prior to said date.

It is an elementary rule of construction that such words and phrases as "made locations," "in good faith," "claims," "purchase," and "entry" are used in their technical sense if they have acquired one, and in their popular sense if they have not. (Endlich on Interpretation of Statutes, par. 2.) Under the coal-land law "location," "claim," "purchase," and "entry" have acquired well-defined meanings. (McKibben v. Gable, 34 L. D., 178.) A location is made by going upon coal land, opening and developing one or more coal mines thereon, and taking possession of the land. The locator's "claim" is thus initiated. It may be preserved by giving the notice required by law. The "purchase" and "entry" are made at the time of final proof and payment, which, in Alaska, may be four years after the location is made.

The phrase "in good faith," as it is used in the law, simply means honestly; without fraud, collusion, or deceit. (*Doctor v. Furch*, 91 Wis., 464, 65 N. W., 164.) "Good faith" means honest, lawful intent. (*Crouch v. First Nat. Bank*, 156 Ill., 342.) Good faith is the opposite of fraud and of bad faith. (*McConnell v. Street*, 17 Ill., 254.) Therefore, in order to come within the terms of this statute, any given coal-land location in Alaska must have been made honestly and lawfully by the locator, prior to November 16, 1906, in his own interest alone, without fraud, collusion, or deceit, or any purpose to violate any provision of the law.

Recourse may be had to the reports of committees of either House of the Congress in order to determine the purpose of the Congress in enacting the law reported upon. (*Binns v. U. S.*, 194 U. S., 495; *Holy Trinity Church v. U. S.*, 143 U. S., 464.) The history of the times, the condition of the country, and the circumstances surrounding the enactment of a law should be considered in construing it. (*Shaw v. Kellogg*, 170 U. S., 331; *Mobile & Ohio R. R. v. Tennessee*, 153 U. S., 502; *U. S. v. Denver, etc., R. Co.*, 150 U. S., 14.) The act of May 28, 1908, originated as S. 6805. In H. Rept. No. 1728 (60th Cong., 1st sess.) the House Committee on the Public Lands, in reporting on this bill, went into the history and conditions of coal-land locations in Alaska. Among other things this report says:

"The object of this bill is to enable coal locators in the district of Alaska to consolidate their holdings in such a way as to make possible the development of the coal fields in that region.

"Furthermore, many of the men who made the original coal locations in Alaska were hardy prospectors, who were willing to undergo the hardships and difficulties surrounding prospecting in that region, but many of whom found it difficult to raise the funds for the expense of survey required of each 160-acre tract and the cost of the payment of \$10 an acre on the land.

"In order to meet these expenditures it would be necessary for them to make arrangements to secure the funds necessary for survey and payment, and there has been some question as to whether under the present construction of the coal-land law this could be done.

"The legislation proposed will enable the pioneers who discovered and prospected these fields to realize upon their claims and will make possible a much-needed development in the Alaska field."

In this report, as well as in the Senate report, No. 655, on this bill, reference is made to the House report on H. R. 19421, on which extensive hearings were had. From these documents it is evident that the Congress had full knowledge of the existence of the several "irregular or illegal agreements or conditions" mentioned in your letter, then existing in Alaska, and that it was the intent of this legislation to permit such locations to proceed to entry and patent upon the terms and conditions prescribed in said act. Said act being remedial and curative in nature, it should be construed liberally, so as to afford all the relief which the language of the act indicates that the Congress intended to grant. (*Beley v. Naphtaly*, 169 U. S., 360, and authorities cited.)

In view of the above considerations I am of the opinion that if the agreements or arrangements mentioned in your letter were entered into by locators of coal lands in Alaska after they had made their locations in good faith and in their own interest alone, such locations may, under the provisions of the act of May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act. On the other hand, I am of the opinion that if such agreements or arrangements were entered into prior to such locations being made, such locations do not come within the provisions of said act and can not be lawfully passed to entry and patent.

Very respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

The CHAIRMAN. It is now about time to take a recess.

Mr. BRANDEIS. May I call your attention to this one thing?

The CHAIRMAN. Very well; go on.

Mr. BRANDEIS. One of the committee requested yesterday the opinion of the Portland Coal and Coke Company case of October 5, 1908. That I will later on introduce in evidence. It appears on page 682 and subsequent pages.

The CHAIRMAN. That is admitted.

(The opinion is as follows:)

(United States Circuit Court, Western District of Washington, Western Division. *United States of America v. Portland Coal and Coke Company et al.* Nos. 1280, 1281, 1282, 1283, 1284, and 1285. Filed October 5, 1908.)

MEMORANDUM DECISION ON BILLS AND ANSWERS.

In these six cases the Government sues to obtain decrees canceling patents issued for lands entered under the coal-land law, which permits entries by individuals of not exceeding 160 acres and by associations of not exceeding 320 acres of public land containing coal deposits and chiefly valuable for coal mining. The several bills of complaint are similar in their allegations, and considered together as one general complaint, they show that separate entries were made by individuals and associations, each of a quantity of land not exceeding the maximum; that the lands were paid for and patents issued to the persons in whose names the entries were made, the aggregate quantity of land so patented being about 6,300 acres. As ground for cancellation of the patents it is averred that the entries were made in pursuance of a conspiracy between the defendants to acquire the title to a large tract of coal land in violation of law for the use and benefit of the Oregon Railroad and Navigation Company, a corporation, and that to effect the object of the conspiracy the Portland Coal and Coke Company was incorporated as a subsidiary corporation dominated by the Oregon Railroad and Navigation Company, and that the money expended in exploring the lands for the discovery of coal and all other incidental expenses, and for the payment to the Government of the price for the lands, was furnished by the Oregon Railroad and Navigation Company.

A number of the defendants have failed to answer or plead and decrees, pro confesso, have been entered against them, and all of the cases have been submitted by the United States district attorney for decision upon the bills and the several answers filed by the Oregon Railroad and Navigation Company, E. E. Lytle and wife, and McKenzie and Goss. Some of the other defendants filed answers disclaiming any interest in the property, and as to them the suits have been dismissed. The Portland Coal and Coke Company has not answered, and it appears to have ceased to exist as a corporation by reason of its failure to pay the license fee required by the laws of Oregon, under which it was incorporated.

The answer of the Oregon Railroad and Navigation Company is defensive only, to the extent of denying all averments of the bills charging it as a promoter of the Portland Coal and Coke Company and as a coconspirator with others to acquire the land, and disclaims any right to or interest in any part thereof, and prays for a decree in its favor for costs.

The defendants, Lytle and wife, by their answer, deny the ownership of the Government subsequent to the issuance of patents, "except as this court may hold that by reason of an unintentional violation of the laws of the United States, the title of the complainant * * * was never divested." This is a negative pregnant, equivalent to an admission that the entries were unlawful and that the patents did not convey a valid title. The answers of these two defendants controvert the charges of conspiracy and fraudulent design, contained in the bills of complaint, but expressly admit that a number of individuals and associations made coal-lands entries aggregating about 6,300 acres, and that there was an understanding between them to the effect that all were to cooperate together in developing and exploiting the property as an entirety and contribute to the general expenses, and share in whatever profits might be realized; and aver that they acted under legal advice and believed that such a combination was not unlawful and that the Portland Coal and Coke Company "was organized solely for the purpose of carrying out the pooling arrangement above referred to." They further aver that the land was all paid for out of money contributed by the several entrymen and deposited in the Merchants' National Bank of Portland, Oreg., to the credit of the Portland Coal and Coke Company; they admit that the defendant, E. E. Lytle, claims an interest in the land by virtue of deeds executed by the several entrymen subsequently to the issuance of the patents.

In case No. 1280, the defendants, McKenzie and Goss, by their answer, deny all the charges of conspiracy and fraud, deny that there was an agreement preceding the entry made in their names binding them to convey the title or hold it in trust, and deny that the United States has had any right to or interest in the property subsequent to the issuance of the patent to them. They admit, however, that coal land aggregating about 6,300 acres was entered as alleged in the bill of complaint, and that it was their "expectation * * * that the lands * * * should be developed and exploited at the joint expense of the entrymen thereof, and that the proceeds of all mineral extracted or taken therefrom and sold should be used for the

payment of the expense of development and exploitation and for the payment of the expense of operation, and that when said lands should have been entered * * * and title therein vested in the several entrymen * * * the said lands * * * should be developed and exploited and the mines thereon operated for the benefit of all of said entrymen, share and share alike;" they further aver that the land covered by the entry made in their names was paid for with money furnished by the defendant, E. E. Lytle, and that the deed which they executed was intended as security for the repayment of said money, and that it has all been repaid, except \$200, and that Lytle has now no interest in said land except as security for said balance. They also aver that they acted under the advice of counsel, and believed, and now believe, that a combination of individuals for the purpose of cooperation in acquiring and operating coal-mining property at the joint expense of all and for the sharing of profits equally is not contrary to law. Considered in its entirety, this answer is a virtual confession that they, the answering defendants, voluntarily associated themselves with others to acquire tracts of land in severalty, but to be held for the joint benefit of all in equal shares, and the only actual opposition to the granting of the decrees demanded by the Government is this contention of these two defendants that the pooling scheme above outlined is not contrary to the statute. Their solicitors have failed, however, to sustain this contention by any argument, and it is the opinion of the court that it can not be sustained. If the scheme was not unlawful, each member of the combination would have a legal right to compel his fellow-members to hold each and every tract for the benefit of all, and to have an accounting of all profits derived from mining operations in each and every tract, although the legal title might be retained by the individual members in severalty. So that the object of the combination was to acquire coal land in excess of 320 acres for an association, although the law fixes the maximum quantity of 320 acres.

For the reason above stated and upon the authority of the decision of the Supreme Court in the case of the United States v. Trinidad Coal & Coke Co. (137 U. S., 160), decrees will be entered in each of the cases as prayed for in the several bills of complaint, except that costs will not be decreed against the Oregon Railroad and Navigation Company or either of the other defendants who have disclaimed any interest in the property. Judgments in their favor for costs will be denied for the reason that the Government is not liable to defendants for costs.

Judge.

The CHAIRMAN. The committee will take a recess until 2 o'clock.
(At 12.40 the committee took a recess until 2 p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

TESTIMONY OF LOUIS R. GLAVIS.

The CHAIRMAN. Mr. Brandeis, you will proceed.

Mr. BRANDEIS. In connection with the Attorney-General's opinion, I desire to introduce also, on page 712, letter of First Assistant Secretary Pierce of June 16, 1909, referring to that decision.

The CHAIRMAN. That will be admitted, and the memorandum also.

Mr. BRANDEIS. Yes, sir; and Mr. Finney's memorandum.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1909.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I inclose herewith four copies of an opinion of the Attorney-General, dated June 12, 1909, relative to the construction of the act of May 28, 1908 (35 Stat., 424).

You will perceive from said opinion that coal-land locations in Alaska made prior to the date of the act in question pursuant to the terms of any one of the classes of agreements or contracts described on page 5 of the opinion can not be consolidated and passed to patent under the provisions of the act of May 28, supra, but that if locations were made in good faith the fact that any of the agreements, arrangements, or contracts described were made after location will not prevent the consolidation of entry

and patent of the claims under the provisions of said act, which, the Attorney-General states, is remedial and curative in its nature.

You will, accordingly, clear list and pass to patent any claims otherwise regular, except for agreements or contracts after location made in good faith. Where no evidence to the contrary appears, the legal presumption of course is that locations were made regularly and in good faith. As to cases where you have sufficient evidence, or in which such evidence may be hereafter filed, showing the existence of any such agreement, arrangement, or contract prior to location, you will proceed in accordance with the practice, rules, and regulations governing such matters.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

MEMORANDUM.

In considering the act of May 28, 1908, relating to coal deposits in Alaska, it must be borne in mind that the idea of Congress and of this department in favoring the legislation was to permit coal claimants to do something they could not lawfully do prior to that time, viz, obtain title to such an area of land as would make a workable coal mine, and that they might do so section 1 of the act gave specific permission for consolidation of claims theretofore initiated and also authorizes the formation of corporations or associations to make entry of such consolidated claims. There were two conditions prescribed: First, that the location must have been made in good faith;^a second, that the corporation consolidating claims must have 75 per cent of its stock in the hands of qualified coal entrymen.

The fact that locators who initiated their claims in good faith may have subsequently thereto and prior to May 28 entered into verbal or written agreements to transfer their claims to a company or corporation and receive in return therefor stock in the corporation, should not in my opinion be the occasion of refusing to permit the corporation, or any other corporation which may acquire title to the claims and who comes forward under the act of 1908 with a showing that 75 per cent of its stock is at the time of application held by qualified entrymen, from completing such an entry and obtaining patent, because though such a contract or agreement was contrary to the law and rules prior to 1908, yet it is now expressly permitted by that act, and to that extent, in my opinion—though it is not so expressly stated—validates the agreements entered into after location and before May, 1908.

It seems to me that this is a rational construction, for, if the law now permits the thing to be done, why question an exactly similar transaction entered into before the passage of the act and which transaction is now sought to be completed under the more liberal law? The purpose of the act, as stated in its title and as well known to all who participated in the legislation, either directly or indirectly, was to encourage and permit the development of Alaskan coal. The law must be liberally construed, and I am not in favor of going behind a transaction regular upon its face, free from objection or protest by third parties, and in compliance with the requirements of the new act as to the actual holding of the stock by qualified persons at the time of application to enter.

The regulations under the act deal with conditions at the time of the application to enter or consolidate the claims. It is at that moment that applicants must show their qualifications.^b In the absence of a specific showing to the contrary, prior transactions should be presumed to have been regular, and, as above indicated, I think the department is justified in considering the agreements specified in sections 1, 2, and 3 of attached letter as in effect validated by the act of 1908 where the assignee, association, or corporation comes forward with a showing of qualifications which fully meets conditions prescribed by the act of 1908 and the regulations of July 11, 1908.

With reference to the fourth section of the attached letter, I have to state that in my opinion a verbal agreement, such as is described therein, would not be a violation of the general coal-land laws nor of the Alaska coal-land law of April 28, 1904, and certainly it could not be in violation of the act of 1908, which expressly provides for consolidation.

In conclusion, I believe that the department should not proceed against any of these Alaska coal claims for which application to consolidate is filed unless it has evidence that the claim was fraudulently located, or a specific charge to that effect is filed.

FINNEY.

^a The following appears in pencil in margin: "In their own interest."

^b The following appears in pencil at bottom of sheet: No; the act speaks from date of its passage.

Mr. BRANDEIS. Then, in connection with the interviews that Mr. Glavis has testified to with Mr. Ballinger, there are the letters to and from ex-Governor Moore, on page 515, dated May 22, 1909—the commissioner to Mr. Moore. The next one is on page 515.

The CHAIRMAN. They may be admitted.

CAH 2Ex

WJH CCH (pen.)

HON. MILES C. MOORE,
Walla Walla, Washington.

MAY 22, 1909.

SIR: In reply to your inquiry, you are advised that applications to consolidate individual pending coal entries in Alaska, under the act of Congress approved May 11, 1908, may be filed at any time prior to July 11, 1909. Your attention is called to marked paragraph of the circular of July 11, 1908, on page 21 of the inclosed coal circular.

Very respectfully,

Commissioner,

Copies by FRL.

Mr. BRANDEIS. I then desire to offer the record on page 71, being the letter of Miles C. Moore. That probably ought to be read. It is as follows:

THE NEW WILLARD,
Washington, D. C., May 22, 1909.

HON. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: I had hoped to see you again before leaving the city but realize that your time is fully occupied. Assistant Secretary Pierce proved a disappointment, and I am going home with a message that will give scant comfort to my associates. Your reasons for turning this matter over to your assistant are appreciated, but we had all felt that when you were named to the position of Secretary, with your full and complete knowledge and your sense of justice, that our long-delayed patents would be forthcoming.

Assistant Secretary Pierce read to me yesterday a letter recently addressed to the Commissioner of the General Land Office instructing him, in effect, to construe the law liberally and not to allow technicalities to obstruct or delay where important interests were involved and where no moral turpitude or fraudulent intent was shown. It now seems to me in reviewing the situation that technicalities have been allowed to govern. The entries in Cunningham's memorandum book, made prior to the extension of the coal-land laws to Alaska, seem to be the bugaboo, although some stress is put upon the fact that there was no understanding to unite these claims after patent. As you know no agreement was entered into, and if it had been simply a matter of mental reservation, while the result would have been the same we would not have been accused of violating the law. Both Mr. Pierce and Mr. Dennett admit there was neither fraudulent intent nor moral turpitude shown. Patents are still offered under the new law, but as no money can be raised on them another year is lost and development delayed. This letter is not intended for your official files but simply to express the feeling of disappointment felt by myself and many of your former friends. If it were possible to have a reconsideration of this matter, I am sure it would be much appreciated and involve no one in a censurable way.

Very sincerely,

MILES C. MOORE.

Senator SUTHERLAND. What does he mean by "no understanding?"

Mr. BRANDEIS. That an agreement had been entered into.

Senator SUTHERLAND. The letter says: "Some stress is put upon the fact that there was no understanding." Should that not be "an?"

Mr. BRANDEIS. It should be "an" understanding, undoubtedly—"Both Mr. Pierce and Mr. Dennett admit there was neither fraudulent intent nor moral turpitude shown."

The CHAIRMAN. I suggest, Mr. Brandeis, that you put in Mr. Ballinger's letter that follows that.

Mr. BRANDEIS. That is the one that I have already stated. I desire that to go in. It is as follows:

MAY 24, 1909.

HON. MILES C. MOORE,
Walla Walla, Wash.

DEAR SIR: I am in receipt of your letter of May 22, 1909, expressing your disappointment at opinion of First Assistant Secretary Pierce with reference to what are known as the Cunningham coal entries in Alaska, and stating that it seems to you that a technicality has been allowed to govern rather than a liberal construction of the law.

In reply, I have to advise you that I can not undertake to issue any order or make any ruling in the matter as requested, because of the embarrassment which would result from the fact that I was, while not holding an official position, called upon to advise in the matter. The case has, however, been carefully looked into, and I wish to say that, in view of all the facts now disclosed, I would, if I were ruling upon the matter, hold that the principle announced in the opinion of Judge Hanford, in the case of *United States v. Portland Coal and Coke Company et al.*, October 5, 1908, is directly applicable to these cases, and that if the allegations made be proven, patents can not issue under the provisions of the act of April 28, 1904.

As you have been advised, the department is disposed to give the coal-land act of May 28, 1908, as liberal a construction as is consistent, and, if you and your associates desire to take advantage of that act, you should proceed in accordance with same and with circular of instructions of July 11, 1908. In this connection, attention is directed to the paragraph of instructions entitled "Pending entries."

Very respectfully,

R. A. BALLINGER, *Secretary.*

The the further letter from Mr. Moore on May 24, 1909, on page 72, which is as follows:

MAY 24, 1909.

HON. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: I have to-day addressed a letter to Senator Jones asking him to take up the matter of our delayed patents with the President. Please do not construe this as meaning to go over your head. Owing to the fact that you were at one time counsel for our people, you can not consistently act. Assistant Secretary Pierce does not understand the case very well, and has been influenced by Glavis, who, having done some disreputable things and become involved in a controversy with Cunningham, is prejudiced and wants vindication. The commissioner naturally wants to keep the record of his office clear and avoid responsibility. The President, therefore, is our only hope, and we are appealing to him through Senator Jones.

Please do what you can consistently for us.

Very truly, yours,

MILES C. MOORE.

The CHAIRMAN. The letters will be admitted.

Mr. BRANDEIS. Mr. Glavis, do you know what the ex-governor refers to when he says you have done some disreputable things and become involved in the controversy with Cunningham?

Mr. GLAVIS. I think he referred to the affidavit he made to the effect that I stole the Cunningham journal.

Mr. MCCALL. Mr. Brandeis, I see Mr. Ballinger's reply to the letter which you have just read on page 73. Would it not be well, in sequence, to have that put in now?

Mr. BRANDEIS. Yes, sir; it is the 27th, apparently. It is on page 73. It is as follows:

MY DEAR SIR: Replying to your letter of May 24, addressed to me from Chicago, in which you criticise the action of Assistant Secretary Pierce and Chief of Field Division Glavis, in connection with the Cunningham coal entries, I can only reiterate what I have heretofore stated to you, that I am not in a position to dictate to the officers to whom these matters have been assigned, particularly in view of the fact that I feel some embarrassment on the ground of having heretofore advised your people before I became Secretary of the Interior. I believe your criticisms are unwarranted, but have

myself taken this matter up with the President and the Attorney-General, so that the action of this department will probably be reviewed by the latter, in which event you will be promptly advised.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

Mr. MILES C. MOORE,
Walla Walla, Wash.

Mr. JAMES. In this conversation that you had with Mr. Ballinger and the assistant secretary relative to getting an opinion from the Attorney-General, what was Mr. Ballinger's opinion, or did he express any, of the law of May 28, 1908, being applicable to these Cunningham patents.

Mr. GLAVIS. He did not express any opinion. He merely said that he had referred it to the Attorney-General for an opinion. He heard both sides; that is, he heard Mr. Dennett's version of the law, and heard the opinion of Mr. Schwartz and myself, which differed materially from Mr. Dennett's opinion, and agreed with Mr. Schwartz and me that the matter should be submitted to the Attorney-General for an opinion.

Mr. JAMES. You all prepared this letter?

Mr. GLAVIS. Yes, sir; for his signature, to go to the Attorney-General.

Mr. JAMES. Did he sign it?

Mr. GLAVIS. No, sir; he turned the matter over then—changed his mind the next day, and gave it to Mr. Pierce for a decision.

Mr. JAMES. Did he ever give you any reason for failing to sign this letter?

Mr. GLAVIS. No, sir.

Mr. JAMES. And have it go to the Attorney-General direct?

Mr. GLAVIS. No, sir.

Mr. JAMES. Is it usual in cases of this magnitude for the assistant attorney-general, or the assistant attorney in the land department to pass upon these questions?

Mr. GLAVIS. I do not know as to that. I do not know what the procedure is in other cases.

The CHAIRMAN. Is it not the custom in all disputed land entries to refer the question to the Attorney-General of the Interior Department? Is that not what he is there for?

Mr. GLAVIS. He renders quite a number of opinions.

The CHAIRMAN. And he has a law division under him, in which there are law clerks and experts.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Who are working under him?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And it is through him and through that division of law clerks that the decisions are written up in all important land cases, is it not—cases that come there by appeal?

Mr. GLAVIS. In land-contest cases all those cases are decided finally by the law clerk of the Interior Department.

The CHAIRMAN. They are referred to the Assistant Attorney-General. So there was nothing unusual in this case in referring this matter to the Assistant Attorney-General's office in his branch of the service in the first instance, was there? Was it outside of the ordinary procedure?

Mr. GLAVIS. It was, in view of what Mr. Ballinger agreed to do the day before—send it to the Attorney-General; he knew Mr. Finney's views were unfavorable to Mr. Schwartz and my opinion relative to the law, and Mr. Finney was one of those who wrote this decision of May 19.

Mr. JAMES. And Mr. Finney is referred to, perhaps by you, or in some letter here, as the confidential man of Secretary Ballinger. What is meant by that?

Mr. GLAVIS. I do not know; that is really not his title, I think. I think his title is secretary to the Secretary. I am not sure as to his title, but he is known—

The CHAIRMAN. I think, Mr. James, that you refer to Mr. Carr.

Mr. GLAVIS. That is the private secretary to Secretary Ballinger.

Mr. JAMES. I refer to Mr. Finney. Some one here, Mr. Glavis or some one else, referred to him in that way.

The CHAIRMAN. Mr. Finney is one of the law clerks.

Mr. JAMES. I know; the one who prepared this opinion, Mr. Finney was, was he not?

Mr. GLAVIS. He assisted Mr. Clements.

Mr. JAMES. In the preparation of this opinion?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. At the time you were in conversation with Mr. Ballinger relative to that, was anything said at that time about who did prepare this opinion, the case being submitted to them?

Mr. GLAVIS. Oh, no, sir; he told us to prepare a letter to the Attorney-General and he would submit the whole matter to the Attorney-General, and we prepared the letter and sent it over to his office.

The CHAIRMAN. When was that letter prepared? Was it before or after Secretary Pierce's decision?

Mr. GLAVIS. That was the letter upon which Secretary Pierce's decision is based. That was prepared the day of the conference with Secretary Ballinger and rewritten the next day and submitted to his office.

Mr. BRANDEIS. Can you fix that date?

Mr. GLAVIS. It was May 17, I think, or the 18th.

Mr. BRANDEIS. And you and Mr. Schwartz prepared the draft to the Attorney-General which was never signed?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And the letter itself is addressed to the Attorney-General?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Describe the interview which you had with Secretary Ballinger the day after or two days after you saw Attorney-General Wickersham in regard to this matter. Now, what happened after that?

Mr. GLAVIS. I waited in Washington until about June 2 or 3, and we had not got a decision yet from the Attorney-General, so I asked to be allowed to go up to New York and continue my investigation of the Alaska coal cases pending—

Mr. BRANDEIS. Were there witnesses there that you wished to see?

Mr. GLAVIS. Yes, sir; and that was arranged and I went up to New York.

Mr. BRANDEIS. Were you there alone or did you have any special agent with you?

Mr. GLAVIS. I had Special Agent Kennedy with me.

Mr. BRANDEIS. And then what was done?

Mr. GLAVIS. I was up there and we got some evidence in the Alaska coal cases there, and I got a telegram from Mr. Schwartz telling me that I could go out to the coast and that they would send me the opinion when it was rendered.

Mr. BRANDEIS. That is on page 516. That letter had better go in, as well as the telegram.

The CHAIRMAN. They will be admitted.

Mr. BRANDEIS. Mr. Schwartz to Glavis, June 5, 1909 (reads):

P-HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 5, 1909.

Duplicate.

L. R. GLAVIS,

Imperial Hotel, New York City, New York:

You may proceed to Seattle. I leave Washington by southern route, arriving Seattle about twentieth. Attorney-General's opinion will be mailed you at Seattle as soon as delivered.

GFW.

SCHWARTZ, Chief.

W. U.

Official business. Government rate.

Mr. GLAVIS. I left Kennedy in New York and he went up to the New England States and made investigations there and I went back to Seattle and started the investigation there again and we continued working on the cases.

Mr. BRANDEIS. Who was working with you then?

Mr. GLAVIS. I had Special Agent Bowman working and Kennedy was working, and I think Special Agent Stoner was doing some work.

The CHAIRMAN. Did you have that agent from Duluth—I have forgotten his name, but that Duluth man—did you have him?

Mr. GLAVIS. Do you mean Mr. Colter?

The CHAIRMAN. Yes.

Mr. GLAVIS. No, sir; he was chief of the Field Division. He had nothing to do with my Alaska coal investigation; that is, he was never detailed to assist me in that work.

The CHAIRMAN. Was he not sent on there to do some investigating?

Mr. GLAVIS. No, sir. Before I had charge of the coal cases he did a little work in Chicago and made a report on that. That was in 1907.

Mr. BRANDEIS. Did you see Mr. Schwartz out in Seattle?

Mr. GLAVIS. I met him along about June 20. I do not know just what date it was.

Mr. BRANDEIS. Was anything taken up in connection with the coal cases then?

Mr. GLAVIS. Yes, sir; we discussed the coal cases. I told him what we were doing and what we still had to do.

Mr. BRANDEIS. Was the question of the field examination taken up?

Mr. GLAVIS. Yes, sir; he wanted me to complete my reports and submit them by July 1. I told him that I did not think I could, but that I would see what I could do, and he sent Special Agent Jones up to help me, and also Special Agent Spaulding. They came up to Seattle.

Mr. BRANDEIS. From Portland?

Mr. GLAVIS. Yes, sir. Jones was to remain there ten days and assist me in the investigation and in making my report.

The CHAIRMAN. How many men did you have, then, after Jones came to aid you there?

Mr. GLAVIS. Who were working on the Alaska cases?

The CHAIRMAN. Yes, sir; how many men had you altogether on that work?

Mr. GLAVIS. About five or six.

The CHAIRMAN. Outside of yourself?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So you were seven in all?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Devoted to that work?

Mr. GLAVIS. Who were working on the cases; yes, sir.

The CHAIRMAN. Mr. Brandeis, here is this telegram on page 516, immediately following the one that you introduced.

Mr. BRANDEIS. I guess we had better introduce that.

The CHAIRMAN. I wish that to go in right after the other. I think that would be the proper place.

Mr. BRANDEIS. You refer to the telegram of Schwartz of June 29?

The CHAIRMAN. Yes.

Mr. BRANDEIS. Very well.

(The telegram will be found in the record at the place indicated by the chairman.)

Mr. BRANDEIS. Just before putting that in I was going to ask Mr. Glavis if he had finished with his statement as to conferences with Mr. Schwartz. Mr. Glavis, is there anything else that you desire to state as to that?

Mr. GLAVIS. What Schwartz told me—that if the complete reports were not made that there would be somebody criticised by it; and I told him that I would do what I could and would go over the evidence, and if I could make complete reports without waiting for the field examination, or if the investigation of the cases were completed, I would do it.

Mr. BRANDEIS. Your interview was entirely friendly with Mr. Schwartz, was it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Had there been up to that time any resentment or any estrangement of any kind between you and Mr. Schwartz?

Mr. GLAVIS. No, sir; we have always been very good friends.

Mr. BRANDEIS. There had been no difference up to that time other than there had been earlier in the year, or the year before?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Did you have any talk with Secretary Ballinger—I mean before June 29—because I want to put in that telegram.

Mr. GLAVIS. No, sir; the last one I had with Secretary Ballinger was right after I had gone to the Attorney-General.

Mr. BRANDEIS. Did you have any talk with Mr. Schwartz about Secretary Ballinger on that occasion?

Mr. GLAVIS. No, sir; I told Mr. Schwartz about what I had done when he was in Seattle in June.

Mr. BRANDEIS. What do you refer to when you say what you had done?

Mr. GLAVIS. About having gone to the Attorney-General, and how I had brought that about.

Mr. BRANDEIS. You told him about Mr. Hoyt's connection with it—that is, Attorney-General Hoyt?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Mr. Schwartz was not in Washington at that time? I believe you stated that he had left.

Mr. GLAVIS. He went away and then he came back. I do not know whether he was there the day I went to see the Attorney-General or not. I am not clear about that.

Mr. BRANDEIS. What did Mr. Schwartz say when you told him about seeking the advice of Attorney-General Hoyt, and his seeing Attorney-General Wickersham?

Mr. GLAVIS. I told Mr. Schwartz that I thought that Mr. Ballinger might feel unfriendly toward me for the action I had taken, but we both felt that when he had realized what the Pierce decision was and what it would mean that he would feel more friendly toward me than he had ever been before, and he also suggested that when he returned to Washington that if he found Mr. Ballinger very unfriendly toward me that he would go to Collier's or some other magazine and give out a story telling how our investigations had progressed and what we were accomplishing in such a way as to give Mr. Ballinger the credit for the investigation, so that he could not help but feel friendly, comparing in his own mind what the effect would have been had that Pierce decision been allowed to stand.

Mr. BRANDEIS. That was what Mr. Schwartz said to you that he would do if possible?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Mr. Brandeis, do you put in that telegram now?

Mr. BRANDEIS. Yes, sir. It is on page 516, and is dated June 29, 1909. It is as follows:

[Telegram.]

JUNE 29, 1909.

Special Agent GLAVIS, *Seattle, Wash.*:

Cunningham group elect to stand on old law. Immediate hearing will follow. Be prepared with your evidence.

CWN WU.

SCHWARTZ,
Chief, Field Service.

The CHAIRMAN. That meant, Mr. Glavis, that they would stand on the law of 1904, and not on the law of 1908, did it not?

Mr. GLAVIS. Yes, sir; that was the first definite decision that they had reached. They had informally advised the office that they were not going to come under the new law before, but they had never officially advised them that they would.

The CHAIRMAN. I think there is some data in the record here—I do not know whether you can put your hand on it, Mr. Brandeis—to the effect that Cunningham, or some of those parties, stated that the reason they could not operate under the law of 1908 was on account of the antitrust provision in the third section; they were unable to raise any money to carry on any operations.

Mr. BRANDEIS. I think that appears in one of ex-Governor Moore's letters that has been referred to.

The CHAIRMAN. I know it appears somewhere in the record, so I call your attention to it so that you will see that it was on that account and not because of this decision of the Attorney-General that they

did not care about operating—that is, at all events, Governor Moore—

Mr. BRANDEIS. At the time they had decided this, that they would stand under the old law, the Attorney-General had not yet rendered his decision on the new law.

Mr. COTTON. Yes he had.

Mr. BRANDEIS. I beg your pardon. It was after he had rendered his decision. The decision was rendered on June 12, and they announced their determination to stand under the old law on June 29.

The CHAIRMAN. I think Governor Moore stated in his letter before that time—

Mr. BRANDEIS. He did not state what he would do; he merely stated the possibility that the first decision that Mr. Pierce gave him was not a very good alternative for reasons stated, and was not satisfied with that solution.

Now, here is the telegram of Glavis, on page 506, dated Seattle, June 29, 1909, to H. H. Schwartz, chief field division, Interior Department. There is a code word here; what does that mean, Mr Glavis?

Mr. GLAVIS. That means mail mentioned in your wire.

Mr. BRANDEIS (reading):

Mail mentioned in your wire 29th. Is it necessary to submit report on Cunningham group.

L. R. GLAVIS.

And on June 30, at page 516, telegram of June 30, 1909, is as follows:

L. R. GLAVIS, *Seattle, Wash.:*

Yes; submit Cunningham report. Notice of charges will be prepared here. You may suggest form in your report if you desire.

SCHWARTZ, *Chief Field Service.*

The CHAIRMAN. Mr. Brandeis, I want to call your attention to page 181 of the record in reference to the matter that I spoke about. The statement from Assistant Secretary Pierce is as follows:

The next day (20th of May, I think) Governor Moore came into my office with Mr. Finney and said that Mr. Finney had called his attention to the opinion of the department of May 19, 1909, on the act of May 28, 1903, and that he would like to talk over the matter with me. Governor Moore said that he and his associates were more or less familiar with the act and the history of its passage and the reasons therefor, but that it was an unsatisfactory act because it denounced a forfeiture of title for illegal combination; that capital would not invest money on the security of patents taken under this act, because it was so easy to make charges and it took so long to disprove them.

Mr. BRANDEIS. Yes; that was the expression just as it was in his letter; he expressed dissatisfaction with it, but he did not formally determine the matter from the letter that was put in evidence of the commissioner to him of May 22, 1909, which was the date before which he must make his election. That is the letter that has been put in evidence already of May 22, which gave him the date of doing it up to July 11, 1909, and apparently they did elect on the 29th of June. It is May 22, 1909, and is in the record at page 515.

(The paper referred to is as follows:)

MAY 22, 1909.

HON. MILES C. MOORE,

Walla Walla, Wash.

SIR: In reply to your inquiry you are advised that applications to consolidate individual pending coal entries in Alaska, under the act of Congress approved May

11, 1908, may be filed at any time prior to July 11, 1909. Your attention is called to marked paragraph of the circular of July 11, 1908, on page 21 of the inclosed circular.

Very respectfully,

Commissioner.

The CHAIRMAN. I want to add further. I did not finish what I was going to say.

Mr. BRANDEIS. I beg your pardon, Mr. Chairman.

The CHAIRMAN. Governor Moore further emphatically said that they had already paid for their entries, located them, and, so far as he was concerned, he would advise them to do nothing at all. The original entries were made under the act of 1904?

Mr. BRANDEIS. Yes, sir.

Mr. JAMES. That has been already offered.

Mr. BRANDEIS. That was a letter that was read at the same time I read the letter giving July 11 as the last date for election.

The CHAIRMAN. That letter has already been offered in evidence.

Mr. BRANDEIS. Yes, sir; they went together; the two letters.

Senator FLETCHER. Did you say that they did elect to come in under the act of 1909?

Mr. BRANDEIS. No, sir; they elected not to. They made their election according to the telegram on June 29.

Senator FLETCHER. Where is that telegram?

Mr. BRANDEIS. It appears on page 516. It is the telegram of June 29—the middle of page 516—and is as follows:

Cunningham group elect to stand on old law. Immediate hearing will follow. Be prepared with your evidence.

SCHWARTZ.

Then I introduce, also, on page 517, the following telegram of Glavis to Schwartz, as follows:

SEATTLE, WASH., June 29, 1909.

Mr. H. H. SCHWARTZ,

General Land Office, Washington, D. C.:

Referring to your telegram 29th, respectfully recommend that Agent Jones be directed to remain here on coal cases; his evidence and knowledge Cunningham group very important codeg.

GLAVIS, *Chief.*

Mr. Glavis, what does that word "codeg" mean?

Mr. GLAVIS. It means "answer by wire," I think.

Mr. BRANDEIS. Then, on the same page, 517, I offer the telegram of Schwartz to Glavis, as follows:

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 30, 1909.

Special Agent GLAVIS,

Post-Office Building, Seattle, Wash.:

Send Jones to Portland this week in accordance with our understanding. When Cunningham or other group is set for trial you may subpoena him. Please discontinue efforts to secure agents and employees from Portland.

SCHWARTZ.

What is the understanding that he referred to?

The CHAIRMAN. I think the understanding must be the fact, as stated a while ago, that he was to have him for ten days. That is the understanding, is it not?

Mr. GLAVIS. Yes, sir; that was the understanding.

Mr. BRANDEIS. Then I offer the telegram of Glavis to the commissioner, appearing on page 519, as follows:

SEATTLE, WASH., June 30, 1907.

TO COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.:

Valuable evidence Alaska coal cases still being secured. New phases develop as investigation progresses. Can not consistently make final reports while further evidence is available. Cunningham group included. Time should be extended at least sixty days longer.

GLAVIS, Chief.

Before that I should have read the telegram appearing on page 518, from Glavis to the commissioner, as follows:

SEATTLE, June 29, 1909.

TO COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.:

Referring to Acting Secretary's telegram of 29th, will forward Cunningham report to-morrow containing unfavorable recommendation.

GLAVIS, Chief.

The CHAIRMAN. Those telegrams are admitted. Now, let me ask you with respect to this telegram at the top of page 519, which you have read. Is that the same as the cipher telegram below on the same page?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. It is a translation of it, is it?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You offer that telegram, do you?

Mr. BRANDEIS. We do.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. And what were the "new phases" developed as investigation progressed; what did that have reference to?

Mr. GLAVIS. Every affidavit we would take we would get some new evidence—a statement which would suggest another one; a line of investigation that would probably give us more valuable evidence.

Mr. BRANDEIS. I now offer the following telegram, appearing on page 519:

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 1, 1909.

Special Agent GLAVIS, Seattle, Wash.:

Reports must be submitted at once as per instructions and agreement. You may, of course, continue investigations. Reports are wanted now. Will send man to Seattle to take charge of investigations and conduct cases in near future. Meantime continue your investigations.

SCHWARTZ,
Acting Assistant Commissioner.

What is the agreement that he has reference to in that telegram?

Mr. GLAVIS. That was a conversation in Seattle in June, when he was out there.

The CHAIRMAN. When you said you would try to get ready by the 1st of July?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I now introduce the letter of H. H. Schwartz, chief of field service, to Mr. M. D. McEniry, appearing on page 519, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 1, 1909.

Mr. M. D. McENIRY,
Chief of Field Division, Denver, Colo.

SIR: From present indications there will be several hearings of more or less importance involving coal entries in Alaska.

I am at this time looking for a competent attorney to sit in the cases and aid Chief of Field Division Glavis. Mr. Glavis is an especially competent man, and the proposition of assigning assistant counsel to him in these cases is at his request.

Please consider whether Mr. Sheridan will be available for such service within the next sixty days; and if so, deliver to him the attached copy of an opinion by the Attorney-General and have him generally prepare himself to conduct hearings when the charge is that entries were made either as "dummies" or under a previous agreement for an unlawful association.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

The CHAIRMAN. That is admitted. That was the Mr. Sheridan who was afterwards put in charge whom you were working under?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. What is the request that Mr. Schwartz refers to in that letter of your having made?

Mr. GLAVIS. When Mr. Schwartz was in Seattle in June, I discussed with him as to when we would try these cases next fall—and I say next fall because then we had in mind trying them in the fall; we did not expect to get an immediate hearing with them—that I would like to have Jones to help me.

Mr. BRANDEIS. Was Mr. Jones a lawyer?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That is this H. T. Jones, the special agent?

Mr. GLAVIS. Yes, sir; and he said he would see what he could do.

The CHAIRMAN. He was the man who succeeded Love, was he not?

Mr. GLAVIS. Yes, sir; he had been in the service since 1903—pretty nearly seven years now—and he had tried a good many cases in a great many hearings with success and I wanted to get him. He was not available, Mr. Schwartz said, at the time, except that he would let me have him for ten days, but said that if he could he would let me have him next fall when they started to try those coal cases.

Mr. BRANDEIS. Was there any talk of your getting Mr. Sheridan?

Mr. GLAVIS. No, sir; his name was not mentioned. We did not talk at all about having any hearings in the summer time in the coal cases; we did not anticipate that.

Mr. BRANDEIS. Do you know Mr. Sheridan?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Do you know of him?

Mr. GLAVIS. No, sir; I do not think I ever heard of him. I do not know many of the new men in the service—that is, unless they would work under me, and I had not seen him.

The CHAIRMAN. But you have stated heretofore that when Sheridan came he and you concurred in your opinion about this case—that is, he agreed with you?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that he did not take an unfriendly view of the case or a different view from what you did?

Mr. GLAVIS. No, sir; I thought he acted very properly in them; in fact, I was surprised that he took the view that he did.

The CHAIRMAN. Then it could not be said that the Land Department or the Interior Department sent an unfriendly man there to supersede you?

Mr. GLAVIS. No, sir; I did not consider him unfriendly.

The CHAIRMAN. I do not mean unfriendly to you, but unfriendly to the cause.

Mr. GLAVIS. No, sir. In view of his recommendation in that case I thought, since he had concurred in my view, I thought my views were right and I thought his were right.

Mr. JAMES. When you met Mr. Schwartz at Seattle, did he make any statement to you about reflecting upon the commissioner or the Secretary of the Interior in writing letters there stating that information had been conveyed to these land claimants from the Land Office and what steps had been taken by the special field agents in the Alaska coal matter?

Mr. GLAVIS. No, sir; he knew I did not mean him, because I had the utmost confidence in Mr. Schwartz.

Mr. JAMES. I see in this report, on page 233, that he uses this language, speaking of you, that you—

submitted 73 reports, covering all the coal claims in Alaska, between the dates of March 20 and the middle of April, 1909, in each of which he repeated the statements contained in the last half of page 16 and the first half of page 17 and the two paragraphs in the center of page 20 of his statement to you. These I consider an unwarranted reflection upon the Secretary, commissioner, and the office generally. So far as I am aware, no one except government officials entitled thereto has ever had access to or knowledge of any of the Alaska coal files.

Mr. GLAVIS. I did not intend that as a reflection upon Mr. Schwartz.

Mr. JAMES. I understand; but the question I was asking you was, He did not mention this to you at Seattle?

Mr. GLAVIS. No, sir.

Mr. JAMES. Now, at the time he made this report was this Cunningham letter on page 64 in his office, where this language appears?

The commissioner has furnished us with copies of all of the correspondence and telegrams relating to our entries between the various special agents and also with your office. Up to date everything seems to be approved by each special and department chief. So now our only delay will be occasioned through failure to receive plats, according to Judge Ballinger's advice.

Mr. GLAVIS. No; he did not know anything about this.

Mr. JAMES. He did not have this letter here—the Cunningham letter?

Mr. GLAVIS. No, sir; I sent a special agent up to the Juneau land office—Special Agent Bowman, who went up there in August—and among the letters that he brought down from Alaska was this one. This was on file in the Juneau office.

Mr. JAMES. So when Mr. Schwartz made this report to the President, saying he considered your statement an unwarranted reflection upon those officials, he did not have this letter here of Clarence Cunningham to the register and receiver of the United States land office at Juneau, Alaska?

Mr. GLAVIS. Oh, I do not know as to that; I thought you meant during June, 1909, when I was talking to him. I do not think he did. I sent this letter to the President on September 3.

The CHAIRMAN. You got it from the Juneau office yourself, did you not?

Mr. GLAVIS. Yes, sir; and I sent it to the President on September 3.

The CHAIRMAN. You can remember whether you had it before this statement of Mr. Schwartz, can you not?

Mr. GLAVIS. Do you mean our conversation in June?

The CHAIRMAN. Yes.

Mr. GLAVIS. I did not get it as I stated. I would like to explain this if I can.

Mr. JAMES. Just what I bring your attention to is whether or not Mr. Schwartz had access to this letter from Clarence Cunningham at the time he made this report to the President?

Mr. GLAVIS. I would have to—

Mr. COTTON. That is not to the President; it is a letter to the Secretary.

Mr. JAMES. Well, whoever it is made to. It commences on page 214; it is dated September 1, 1909—that is the date on it.

Mr. GLAVIS. No; he did not have knowledge of that visit then, because I did not get this letter until I returned from my letter to Beverly, Mass., last summer, and I transmitted to the President on September 3, 1909.

Mr. BRANDEIS. Where were you when you transmitted it?

Mr. GLAVIS. At Seattle, Wash.; so he could not have known.

Mr. BRANDEIS. He could not have reached him before the 8th.

Mr. GLAVIS. No, sir; he did not know about this letter then.

Mr. BRANDEIS. Mr. Chairman, there are quite a number of letters that I want to introduce, but on page 519—

The CHAIRMAN. On page 519 everything has been introduced except the last one.

Mr. BRANDEIS. Yes, sir; but there are quite a number of letters during June and July and the early part of August that I want to introduce, but very few that I have read. Would you prefer that I give the list to the stenographer?

The CHAIRMAN. Yes; you can give him a list.

Mr. BRANDEIS. Then I will only mention those that I am going to read?

The CHAIRMAN. Yes.

Mr. BRANDEIS. The first that I will read is on page 525. It is dated July 8, 1909.

The CHAIRMAN. It is at the bottom of the page.

Mr. BRANDEIS. Yes, sir. This is the report that he was called upon to make.

(It is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Washington, July 8th, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: In compliance with your telegram of March 10th, calling for report as to status of investigation of Alaska coal entries, I submitted a report under date of March 23rd, 1909, in reference to the coal entries made by Clarence Cunningham as agent, and known as the "Cunningham group," which I ask to be considered with reports and evidence heretofore submitted.

The affidavit and evidence submitted in these several reports show that the coal declaratory statements in said group were filed subject to agreement that upon title being perfected to the individual claims of one hundred and sixty acres each, the

entrymen were to deed such claim to a company to be formed for the purpose of developing and marketing the coal, and receive stock in said company in payment, Cunningham, the agent in the case, to receive one-eighth of the stock issued to each entryman.

Upon the submission of this report, in compliance with telegram heretofore mentioned, I was advised by telegram, dated April 20th, that Alaska coal investigation must be completed within sixty days, and under same date I advised you that this would be impossible, owing to the fact that snow covered the claims.

Special Agents Stoner and Andrew Kennedy will proceed to Alaska on July 16th, in order to make the necessary field examinations. They will also endeavor to procure additional evidence from persons residing in the vicinity of the claims. The necessity for such field examinations, showing that the claims have been worked with a view to the consolidation thereof, and of the mining and marketing of the coal for the benefit of the claimants with the intention to form a company, is perfectly apparent to you, since your office verbally instructed me in the past that such evidence would be very material, and would strengthen the Government's cases.

Since the submission of my report of March 23rd there has been no evidence secured in this group of entries, for the reason that the time allowed within which to make these investigations has been too short to complete the same, for the reason that there are one thousand claimants involved in this investigation, residing in all sections of the United States, parts of Canada, and Alaska.

In your telegram of June 30th you state that you will prepare notices of charges, but that I may submit a form for your consideration, and I therefore respectfully recommend that the following charges be contained in the notices:

First. That the coal declaratory statement was not made in good faith.

Second. That the said coal declaratory statement and entry was not made for the sole use and benefit of the entryman.

Third. That an understanding existed whereby persons other than the original claimants were to receive, directly or indirectly, an interest or benefit in the said land.

Fourth. That prior to filing the said coal declaratory statement the said entryman unlawfully conspired with his duly appointed agent, Clarence Cunningham, and with other persons, to defraud the United States, under the coal land laws and regulations relating to the district of Alaska, of its title to the lands embraced in said entry and of other lands adjacent thereto.

I respectfully recommend that the above notice of charges be served on each entryman involved in said group, as well as others interested, in accordance with the circular of November 25th, 1907. I wish to most urgently impress upon you the necessity of awaiting the completion of the investigations of this group before any proceedings are instituted with a view to the cancellation of the entry, since facts may develop which would enable us to make other charges. In addition to the evidence which will be secured by Agents Stoner and Kennedy in Alaska, I am very anxious that the claimants who have assigned their claims be interviewed in order to show the understanding which they had. I am also reliably informed that Clarence Cunningham had endeavored to interest others in these coal fields, and their evidence would show the representation made to them by Cunningham as being the same as that existing with the present entrymen.

While in Washington I was shown several letters written to the department by Miles C. Moore, and I respectfully recommend that I be furnished with certified copies of all such letters, as well as any other correspondence which may be on file in your office or in that of the department relative to this group of entries.

Respectfully,

(Signed) L. R. GLAVIS,
Chief of Field Division.

The CHAIRMAN. Now, Mr. Glavis, I understood you, in your testimony heretofore, that you had already, prior to this time, secured affidavits from all these entrymen in the Cunningham group. Had you or had you not?

Mr. GLAVIS. Yes, sir; I had practically secured all of them.

The CHAIRMAN. Before you sent in this report you had practically secured affidavits from every one of the entrymen in that group?

Mr. GLAVIS. Yes, sir; I stated heretofore that as the two or three people—

The CHAIRMAN. Then as to all these—

Mr. GLAVIS. Mr. Chairman, I had not finished.

Mr. GRAHAM. Mr. Chairman, he says that he has more that he wishes to state in answer to your other question.

The CHAIRMAN. Very well; go on.

Mr. GLAVIS. I was saying that there were two or three people that I still wanted to take affidavits from.

The CHAIRMAN. But they were not claimants.

Mr. GLAVIS. One or two had assigned their claims to others who are now holding them under the Cunningham claims.

The CHAIRMAN. The assignee?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. But you had taken the affidavits long before this of all the original claimants?

Mr. GLAVIS. Practically all of them.

The CHAIRMAN. All that was needed practically then to perfect this case, according to your view of the case, was this field examination, was it not?

Mr. GLAVIS. Yes, sir; that field examination and the other evidence which I thought we might be able to get, as stated in this report that has just been read.

The CHAIRMAN. What other evidence had you in view at that time outside of the field examination?

Mr. GLAVIS. As stated here in this report—

The CHAIRMAN. I mean in respect to these Cunningham claims.

Mr. GLAVIS. This whole report which has just been read was in reference to a Cunningham case.

The CHAIRMAN. I so understood.

Mr. GLAVIS. I said, "in addition to the evidence"—this evidence on the Cunningham—I state here in the next to the last paragraph of that report, on page 526—

I am also reliably informed that Clarence Cunningham had endeavored to interest others in these coal fields, and their evidence would show that the representation made to them by Cunningham as being the same as that existing with the present entrymen.

I thought maybe that Cunningham might have also made statements to those people which I had not any information of in the evidence already secured that might also be similar to those people who were now in the Cunningham group.

The CHAIRMAN. Did you know of any such cases at the time you made this report?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Did you know of any such specific cases, I mean?

Mr. GLAVIS. There was an attorney up at Wallace, Idaho, who was called upon by Cunningham, or that Cunningham tried to interest in this case.

The CHAIRMAN. Who was that?

Mr. GLAVIS. I was just trying to think of his name—I heard that from Special Agent Doyle—Edward Doyle; he is now in Helena, I think. He told me that he understood that, and he had heard that Cunningham had tried to interest others. I think that is where I first got my information—from Doyle. Then I also thought, as I stated before, that the agents of Special Agents Kennedy and Stoner might also be able to get some other evidence on the ground from the people who worked for Cunningham.

The CHAIRMAN. That was the additional evidence that you had in view at this time?

Mr. GLAVIS. That and the field examination.

The CHAIRMAN. Yes; the field examination and what you have stated?

Mr. GLAVIS. Also what I further stated in this report that there were a few of those who had assigned their claims that I wanted to interview.

The CHAIRMAN. Do you know how many had assigned their claims?

Mr. GLAVIS. I do not know the exact number; about four or five, I think.

The CHAIRMAN. Do you know who they had assigned them to?

Mr. GLAVIS. Yes, sir; they had assigned them to some of the Cunningham claimants—who are now the Cunningham claimants.

The CHAIRMAN. They are in that list that you have in the book?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You have those assignees in that list that is already in evidence?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Were the assignors in the list?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Do you offer the list in evidence?

Mr. BRANDEIS. Yes, sir.

Mr. GLAVIS. I think that will show.

Mr. BRANDEIS. Were they affidavits from the assignors or assignees that you thought you might want to get?

Mr. GLAVIS. From the assignors.

Mr. BRANDEIS. That is those who were no longer claimants?

Mr. GLAVIS. Yes, sir. There is another point also that I had in mind as shown by this report. It is in the second from the last paragraph on page 526, as follows:

I wish to most urgently impress upon you the necessity of awaiting the completion of the investigations of this group before any proceedings are instituted with a view to the cancellation of the entry, since facts may develop which would enable us to make other charges.

Well, it was from the report of their expert, Hawkins, I think I got this information; any way, I had in mind that the probability was that they might not have complied with the law—the coal-land law—making it necessary for them to improve and develop and uncover coal on each one of the 33 claims, since it appeared that they had made most of the improvements on one of the claims. That being a fact, that would be another ground for the cancellation of these particular claims.

The CHAIRMAN. Under the act of 1904?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. As a matter of fact, Mr. Glavis, when your agents went up there what did they find in that respect?

Mr. GLAVIS. I think they found three or four of those claims that way; I do not remember. I know there were several of them that way.

Mr. BRANDEIS. That is, there were some of the claims that proved to be bad on that additional ground on which you did not have any evidence at the time you wrote the letter?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. That was an investigation that was carried on that summer, was it?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. In July?

Mr. GLAVIS. That Special Agents Kennedy and Stoner went up to Alaska on.

The CHAIRMAN. That was in July, 1909?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Were you connected with it then—you sent them up there?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. How long were you connected with the investigation?

Mr. GLAVIS. I was connected with the investigation practically all the time, because when Sheridan came out there to Seattle in July to take charge of the Cunningham cases, after making his report, concurring in my report, Mr. Dennett told him he could go back to Denver and I could go ahead and complete this little work and wait until the agents got back from Alaska, and he went back to Denver about three or four days afterwards.

The CHAIRMAN. And left you in complete charge?

Mr. GLAVIS. Yes, sir; and I kept working on them.

The CHAIRMAN. And no one hindered you from pursuing your investigations?

Mr. GLAVIS. No, sir; I kept right ahead working on the investigation.

The CHAIRMAN. You got no orders to suspend or discontinue from Washington, did you?

Mr. GLAVIS. No, sir; not after that.

Senator FLETCHER. Where were you then?

Mr. GLAVIS. I was in Seattle. That was the latter part of July, 1909. They had agreed to allow me the ninety days that I asked for,

The CHAIRMAN. Let me ask you another question for my own information, because I want to locate myself. Did they at this time give notice to commence detailing before the commissioners that were contemplated?

Mr. GLAVIS. No; not at that time; no, sir, I do not think so. I do not know just what they did do here in Washington, but I do not think they did.

The CHAIRMAN. Do you know, or does your attorney know, whether they proceeded with these hearings in taking testimony before commissioners around the country as they planned to do before you got through with your investigations up there in Alaska in the fall?

Mr. GLAVIS. I do not understand you. They had not begun the taking of testimony until some time in November, after the field examination.

The CHAIRMAN. After your field examination in Alaska was over?

Mr. GLAVIS. Yes, sir; and the agents had returned to Seattle.

The CHAIRMAN. So that they followed your advice after all; they did not proceed to take that testimony or hold those hearings before the commissioner until you had made that examination in the field?

Mr. GLAVIS. No, sir.

Senator SUTHERLAND. When did you complete this investigation, Mr. Glavis?

Mr. GLAVIS. Why, I did not complete it——

Senator SUTHERLAND. When did you do the last work that you did in that direction, then?

Mr. GLAVIS. On one of the coal cases particularly.

Senator SUTHERLAND. The Cunningham case.

Mr. GLAVIS. I do not remember just when it was.

Senator SUTHERLAND. Well, approximately.

Mr. GLAVIS. It was about this time—in July some time.

Senator SUTHERLAND. In July, 1909?

Mr. GLAVIS. Yes, sir; I think it was that.

Senator SUTHERLAND. When did you first begin the work of investigation?

Mr. GLAVIS. Of the Cunningham cases?

Senator SUTHERLAND. Yes.

Mr. GLAVIS. I began about March 1 or March 2, 1908, I think it was.

Senator SUTHERLAND. That was the first work you did in the way of investigating?

Mr. GLAVIS. That was the first actual work—the first affidavits I secured. Of course, as I have stated, during January and February, 1908, I had made a rather preliminary investigation to ascertain who among the coal claimants would probably be the best people to first approach, but the actual securing of affidavits there was March 2, 1908.

Senator SUTHERLAND. When did you first take charge of the matter of investigating?

Mr. GLAVIS. The first official letter was December 28, 1907, I think.

Senator SUTHERLAND. 1907?

Mr. GLAVIS. Yes, sir; that followed as a result of my conference with Mr. Ballinger, about December 15.

Senator SUTHERLAND. Then you were formally given charge of the investigation in December, 1907?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. But did the last work of investigating in July, 1909?

Mr. GLAVIS. Yes, sir—well, the special agents Stoner and Kennedy were probably working on the coal cases in August of that year.

Senator SUTHERLAND. Now, with the exception of the time you have mentioned, which I understand was during the summer of 1908, were you in any way prevented from going ahead with the investigation?

Mr. GLAVIS. No, sir; I was directed to resume in October, 1908.

Senator SUTHERLAND. Then you were concluded because of the work in Oregon?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. For a period of about four months?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. During the remainder of this period you were free to pursue the investigation?

Mr. GLAVIS. Of course I had a lot of work to do, but I could not do the work at that season of the year, because after the summer of 1908 was over I could not do the work on the Cunningham claims until the summer of 1909.

Senator SUTHERLAND. So far as any direction from the department was concerned you were free to pursue it with the exception of those four months?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. You seemed to have been anxious all through to show these claims to be fraudulent. I notice in various places that you speak of your hope of securing adverse testimony which would prove them to be fraudulent. Were you anxious to set them aside simply because they were fraudulent? I am wondering whether you stated at one time that there was a way by which some parcels of land could have been acquired at once by the wives or relatives of these same claimants. If you had succeeded in setting aside these claims and the land had then been acquired, what particular benefit would have accrued to the United States or the people of the United States?

Mr. GLAVIS. Of course, our instructions are to cancel the fraudulent claims that existed at that time so as to restore the land to the public domain, so that the people, if they take it up lawfully, may do so.

Mr. DENBY. I was just wondering; your own suggestion was that these same people might acquire the same land immediately after these claims had been set aside.

Mr. GLAVIS. Yes, sir.

Mr. DENBY. So that practically there would be no claim of ownership and the land would pass out of the hands of the people of the United States just the same, even though these claims were set aside.

Mr. GLAVIS. The other day, when I testified to that, I endeavored to explain my reason for suggesting that.

Mr. DENBY. My recollection is that you said it was with the hope that all other claimants would then withdraw their lands—that all the claims were fraudulent—all the Alaska coal-land claims.

Mr. GLAVIS. No, sir; I did not. There were some that were not. I think there were some, if I remember right, there are about—I think I have got it—

The CHAIRMAN. I think you reported a few cases yourself?

Mr. GLAVIS. Yes, sir; I remember reporting a few, but I do not know the exact number.

The CHAIRMAN. Of some of the minor groups.

Mr. GLAVIS. I made favorable reports on 21 filings out of the eight or nine hundred.

The CHAIRMAN. Were those Matanuska claims or were they Katalla claims?

Mr. GLAVIS. Some of them were in one of the fields and some were in other fields. There were only two people—the most number that were in there were four people in one of the groups. There were just one or two filings. There was no evidence of fraud among those two people that I could gather.

The CHAIRMAN. I mean did they belong to the Matanuska coal field or the Katalla?

Mr. GLAVIS. Some of those belonged to one of the coal fields and some to the other.

Mr. BRANDEIS. On page 525 is a telegram, dated July 17, as follows:

Special Agent SHERIDAN,
c/o Chief McEniry,
712 & 714 E. & C. Building,
Denver, Colorado.

Your instructions, Cunningham case modified. You will proceed to Seattle, taking complete charge of the case, with authority to call for any agents or assistants necessary to bring case to prompt hearing and close.

SCHWARTZ,
Acting Assist. Commissioner.

Then, there is a letter on page 425, dated July 20, 1909, from Dennett to Schwartz.

The CHAIRMAN. I would suggest in connection with that telegram that you put in the one immediately above that also.

Mr. BRANDEIS. Yes, sir; I am introducing quite a large number of others.

The CHAIRMAN. I thought that this should come in the record in connection with that.

Mr. BRANDEIS. Very well. It is a telegram on page 525, dated July 17, 1909, as follows:

[Telegram.]

P-HHS

JULY 17, 1909.

Special Agent GLAVIS, *Seattle, Wash.*:

Your wire sixteenth, in reference your consultation with secretary received. Instructions heretofore issued modified in view of your telegram sixth. Your report of eighth not at hand. Have this day wired Sheridan as follows: "Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agents or assistance necessary to bring case to prompt hearing and close." You will render Sheridan every assistance. Meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation cannot proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearings.

(Signed) SCHWARTZ.

The CHAIRMAN. That is to Special Agent Glavis, the same day as the one to Special Agent Sheridan?

Mr. BRANDEIS. Yes, sir. Mr. Glavis, this telegram refers to your consulting the Secretary. Does that refer to Secretary Ballinger?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. What was that consultation?

Mr. GLAVIS. On July 16 I had received a telegram——

Mr. BRANDEIS. Look at page 524.

Mr. GLAVIS. Yes; this is the telegram I received from Acting Assistant Commissioner Schwartz, addressed to me at Seattle. It is as follows:

JULY 16, 1909.

Special Agent GLAVIS, *Seattle, Wash.*:

Please wire towns or cities in the order in which you wish to take testimony Cunningham case. Wish to arrange for bringing on the witnesses in accordance with your desire. Have directed Special Agent Sheridan, competent trial attorney and experienced in coal matters, to report to you until after testimony is complete.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

The CHAIRMAN. I should think the word "not" ought to go in there—not to report to you until after the testimony is complete.

Mr. BRANDEIS. No, sir; I do not think so.

Mr. GLAVIS. The object of his coming was to assist me in the trial of the case.

The CHAIRMAN. Oh, he wanted him to stay with you?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Those two telegrams are admitted in evidence.

Mr. GLAVIS. When I received that telegram, Secretary Ballinger was in Seattle at the time and I went to him and showed him this telegram. I also showed him my telegram of the 6th, which is on

page 525, in which I say, "Government's case would be much stronger by awaiting the result of investigation in Alaska."

The CHAIRMAN. Your telegram of July 6th on page 525 relates to the place of taking testimony?

Mr. GLAVIS. Yes, sir; and then I added that the Government's case—you will find it in that telegram—I do not recall those names.

The CHAIRMAN. Do you offer that telegram in evidence, Mr. Brandeis?

Mr. BRANDEIS. Yes, sir; I am offering all these telegrams and letters in that whole period in chronological order, but they are so numerous that I thought it would save the time of the committee not to read each one of them. There are perhaps 40 or 50 of them.

Mr. GLAVIS. I went to Secretary Ballinger and showed him my telegram to the General Land Office of July 6, and also my report of July 8 that has just been read and stated to him that I felt that the hearing should be postponed until after Mr. Kennedy and Mr. Stoner had returned from Alaska and we found out what was the result of their investigation there. He asked me the object of their visit to Alaska, and I told him what I was in hopes would be found out by Mr. Kennedy, that the working of the Cunningham claims was done with the intent of consolidation and all the improvements had been made with that intent, and Mr. Ballinger said that perhaps the Cunningham claimants would stipulate to that, and I told him that I did not know what stipulation they were making, if any, because they were apparently doing that in Washington. So Mr. Ballinger told me to send those telegrams and call the attention of the office to my telegram of July 8 or July 6, and the report of July 8, and ask him whether they had considered those two reports when directing me to give them the names of the cities where the testimony should be taken.

The CHAIRMAN. Mr. Glavis, as a matter of fact, the hearings were postponed, were they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. The hearings were postponed until after the field investigation in Alaska?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. There have not been any hearings yet, have there?

Mr. GLAVIS. Do you mean at this time?

The CHAIRMAN. Yes.

Mr. GLAVIS. It was not determined that there would not be any hearing until after the field examination until July 24 or 26, and this was July 16, and at that time it was not intended that they would proceed at once with the hearing.

The CHAIRMAN. But after you protested on July 22 they determined to postpone the hearings, did they not?

Mr. GLAVIS. It was after Mr. Sheridan had made that report and the Forest Service had been protesting that they had discontinued the investigation.

The CHAIRMAN. They discontinued—in fact they did not start upon these hearings before the commissioners in the different places?

Mr. GLAVIS. No, sir; not until along in November, 1909.

The CHAIRMAN. This last November?

Mr. GLAVIS. Yes, sir. So in compliance with Secretary Ballinger's suggestion, I sent this telegram of July 16, 1909, which appears on page 524.

The CHAIRMAN. As a matter of fact, then, Mr. Glavis, they really followed your advice—Secretary Ballinger and the Land Office—and did not have any hearings until after your field investigation had been completed in Alaska? Is that not true?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Is it exactly true that they followed your advice? Is it not the fact that they followed the advice of Mr. Sheridan, which formed the advice which you had previously given and which they had rejected?

The CHAIRMAN. Followed the advice of both. You can put it in that form.

Mr. GLAVIS. Also the various services.

Mr. BRANDEIS. And also that Secretary Wilson had in the meanwhile requested the postponement.

Senator FLETCHER. You had better have that brought out.

Mr. BRANDEIS. I am just about to call attention to those letters.

Senator FLETCHER. I suggest, Mr. Brandeis, that while you are on that point you give that conversation in full with Mr. Ballinger out there and state what his attitude was at that time with reference to these matters; how he impressed you, and what position he took with regard to going on with the hearings, or handling these coal matters—in that conversation you had with him at Seattle.

Mr. GLAVIS. He did not appear friendly, as he used to appear to me at that time, but as far as his attitude toward this case was concerned, he said practically just what I have repeated, for me to wire and call attention to my report and telegram. I asked as to whether they had taken that into consideration when they sent me this telegram of July 6, that appears on page 524, but outside of that he said nothing about the Cunningham cases, except that he thought that the Cunningham claimants would stipulate as to the joint workings of the coal claims, and that kind of evidence that I expected to get from Special Agent Kennedy's investigation.

The CHAIRMAN. Mr. Glavis, that was a stipulation to take the testimony before these commissioners and submit it to the land office instead of taking it at Juneau and submitting it to the register and receiver at Juneau, was it not?

Mr. GLAVIS. That is another stipulation: that is not the stipulation that Mr. Ballinger had in mind. We were speaking about what they would stipulate as to evidence.

Mr. JAMES. As to what you should find out at the examination in the field, was it not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Mr. Ballinger's suggestion was, in fact, that they would agree that as a matter of fact there was a tunnel on this land which had been constructed in common and was used in common. Is that not the fact? Was it not a stipulation in order to save proof of that fact?

Mr. GLAVIS. He did not say that they would do it; he said he thought they would stipulate to those things.

Mr. MADISON. It was a suggestion that the stipulation be made as to what the result of the investigation up there would be—a stipulation as to what the evidence would be?

Mr. GLAVIS. Yes, sir; an investigation on the ground.

Mr. MADISON. Did the investigation on the ground show that state of facts?

Mr. GLAVIS. Yes, sir; and also showed further that they had not done the necessary amount of work on two or three of the claims—I do not know how many; that they had not uncovered the coal and properly developed the claim before making entry.

The CHAIRMAN. Mr. Glavis, I am not very clear about what you stipulated about that stipulation. I got the idea from what you stated before that it was a stipulation that they might go on with those hearings and put in the result of that field examination in Alaska afterwards. Was that not the stipulation? It was not a stipulation that they should agree about the facts as to what that field investigation resulted in?

Mr. GLAVIS. That is another stipulation. I was referring to a stipulation that Mr. Ballinger suggested the coal claimants might be willing to make.

The CHAIRMAN. What was that stipulation? Please repeat it.

Mr. GLAVIS. The one that Secretary Ballinger suggested they might be willing to make?

The CHAIRMAN. Yes.

Mr. GLAVIS. He said he thought they would stipulate to the fact that I expected to go by the investigation on the ground by my coal experts.

The CHAIRMAN. They might agree to these facts of the field examination?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. That is all.

Senator FLETCHER. Did you have any other conversation with Mr. Ballinger out there at that time?

Mr. GLAVIS. No, sir; I just met him once a few days before, and then said "How do" to him, and I have not seen him since.

Mr. BRANDEIS. Did Mr. Ballinger state what reason he had for believing that the Cunningham claimants might stipulate that fact in regard to joint use?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. I now introduce the letter on page 425, the letter of July 20 from Dennett to Schwartz, and will first ask you, Mr. Glavis, whether Commissioner Dennett was in Seattle at that time?

Mr. GLAVIS. He was there July 24. He arrived about July 20 or 21.

Mr. BRANDEIS. I now introduce this letter. I will also introduce in this very connection Exhibit 25½, on page 424, and call attention to the first three lines:

Cunningham claimants, sworn statements in final proofs made in 1907.

In all cases the improvements consist of boarding and warehouse, trails and roads, cuts on claim, and tunnels for joint development of claims.

In the following cases tunnels for joint development are not definitely located by proof.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 20, 1909.

MY DEAR SCHWARTZ: The worst situation on the line is the one I find here. Our friend, Glavis. He regarded me with suspicion, and after talking a while showed me your telegram assigning the coal cases to Sheridan. Said he supposed you were mad

with him for talking the matter over with the Judge. Showed me his telegram to you. I talked further with him and found that he had wired to Shaw to ask Shaw to come out and assist him in these Cunningham cases, on the ground that the majority of the cases were for claims within the forest reserves in Alaska, and that Shaw had wired back that he, Shaw, was too busy and could not come, owing to the absence of Wells. I perceived that the date of this telegram was one day before the date of the telegram from you to him superseding Glavis and placing Cunningham in charge; I immediately told Glavis that this was the reason that you had wired placing Sheridan in charge; that while we liked Shaw we realized that he was the most energetic of the men in the Forestry, and that he had for the past two years been doing little else than put up jobs to dispossess our boys of the work; I also found that the law officer of the Forestry at Portland was in consultation with Glavis and had been sent here by Shaw. Now I figure that Glavis is preparing to make a cushion for himself to fall back on, and also putting himself in shape to have a great story in case Sheridan does not make good and succeed in canceling the Cunningham cases; namely, that he plead for extra time, was refused; that a new man was placed in charge who knew nothing about the cases, thus throwing them; putting the onus on the Secretary and, I presume, myself, as being Seattle people. He also insists that he was refused Jones to help; that we took Doyle away from him; and, all told, while he looks innocently at me, yet I can see that his heart is bad, though why it should be I can not tell, except that he wanted to drag the cases out; he may be sincere, of course, in his idea that he has not been given time and opportunity. He asserts that he will help Sheridan all he can, but it is not human nature, or at least his human nature. The atmosphere is not good at all. That he is playing the Forestry there is no question; the innocent look he gave me when I told him that he was dragging in Shaw, etc., when there was no necessity was beautiful. "Why, that was directly in line with the Secretary's letter of March 2." He is also talking conservation very strongly. Glavis talking conservation! All around he is ugly, and he is preparing to be as unpleasant as he can, at least that is my solution of the situation. Now the only thing that I can see is for me to try to be back by the 15th, and then have you run out here to dig into the situation. Glavis prophesies the greatest friendship for you, and I think you know him better than anyone else, and this is certainly the worst situation we have. He will make about forty favorable and about five hundred unfavorable reports; the way things will commence to drop will be amusing. The Judge says: "It will all come out; Congress will have to come to the rescue." However, all the rescue that Congress gave before amounted to very little.

This is also the only spot in which there is any trouble about the new timber regulations. Kennedy has cruised as high as \$9,000 for a quarter. This looks to me as if the Forestry had Glavis pretty solidly.

Whether it would be well to modify the Sheridan instructions I can not as yet tell; will write you later. It may be all right to let things stay until you come; that you will have to come there is no question, for I think that you can get at the meat of the trouble here; it may be that I am arriving at wrong conclusions all down the line—so do not let this letter prejudice your mind.

Of course I do not wonder that he has to make adverse reports after the Attorney-General's opinion of the law; that is all right; but it is his attitude that is bothering me; it looks as if he were trying to dig pitfalls for his best friends. Write me what you think of the situation. Also write me as to whether Altizer has my itinerary; I will try and dig up my copy. In the meantime, I will be here until Sunday night; then to Portland for Monday. Leave there Tuesday for San Francisco, one day, and then Salt Lake; stay there one day, and leave the next for Cheyenne; how long there I do not know.

Best wishes.

Sincerely,

FRED DENNETT.

EXHIBIT 25½.

Cunningham claimants' sworn statements in final proofs made in 1907.

In all cases the improvements consist of boarding and ware house, trails and roads, cuts on claim, and tunnels for joint development of claims.

In the following cases tunnels for joint development are not definitely located by proof:

Entrymen.	Entry.	Survey.	Joint contribution.
W. H. Warner.....	Coal entry No. 31.....	No. 66.....	\$2,000
N. B. Nelson.....	Coal entry No. 33.....	No. 37.....	2,000
Chas. Sweeney.....	Coal entry No. 18.....	No. 40.....	2,300
R. K. Nellis.....	Coal entry No. 24.....	No. 45.....	2,000
J. G. Cunningham.....	Coal entry No. 11.....	No. 42.....	2,000
Frank A. Moore.....	Coal entry No. 32.....	No. 39.....	2,000
B. C. Riblet.....	Coal entry No. 19.....	No. 68.....	2,000
John A. Finch.....	Coal entry No. 27.....	No. 67.....	2,000
W. B. Moore.....	Coal entry No. 28.....	No. 69.....	2,000
Ignatius Mullen.....	Coal entry No. 5.....	No. 41.....	2,000

In the following cases the joint-development tunnel is located on the Tenino claim (survey No. 51), and in three cases on the Tenino (survey No. 51) and Clear claim (survey No. 68):

Entrymen.	Entry.	Survey.	Joint contribution.
Henry White.....	Coal entry No. 6.....	No. 44.....	\$2,300
A. L. Leonild.....	Coal entry No. 1.....	No. 50.....	2,000
Alfred Page.....	Coal entry No. 21.....	No. 64.....	2,000
Chas. J. Smith.....	Coal entry No. 3.....	No. 71.....	2,000
H. C. Henry.....	Coal entry No. 4.....	No. 62.....	2,000
A. B. Campbell.....	Coal entry No. 13.....	No. 49.....	2,300
Clarence Cunningham.....	Coal entry No. 12.....	No. 46.....	2,000
Michael Doreen.....	Coal entry No. 9.....	No. 54.....	2,000
F. C. Davidson.....	Coal entry No. 8.....	No. 53.....	2,000
F. H. Mason.....	Coal entry No. 16.....	No. 56.....	2,000
A. D. Jones.....	Coal entry No. 29.....	No. 70.....	2,000
H. B. Wick.....	Coal entry No. 15.....	No. 47.....	2,300
M. C. Moore.....	Coal entry No. 26.....	No. 60.....	2,000
O. D. Jones.....	Coal entry No. 30.....	No. 67.....	2,000
F. C. Moore.....	Coal entry No. 20.....	No. 55.....	2,000
Henry Wick.....	Coal entry No. 14.....	No. 48.....	2,000
W. W. Baker.....	Coal entry No. 22.....	No. 30.....	2,000
Fredk. Burbridge.....	Coal entry No. 23.....	No. 43.....	2,000
F. A. Johnson.....	Coal entry No. 10.....	No. 59.....	2,000
Joseph H. Neill.....	Coal entry No. 25.....	No. 52.....	2,000

In the following cases joint tunnel is located on Carlsbad claim (survey 45) and Clear claim survey 68):

Entrymen.	Entry.	Survey.	Joint contribution.
Frances Jenkins.....	Coal entry No. 2.....	No. 58.....	\$2,000
Wm. E. Miller.....	Coal entry No. 17.....	No. 61.....	2,000

The CHAIRMAN. Is that, Mr. Brandeis, the report of the field examination?

Mr. BRANDEIS. That is submitted as a part of the Geological Survey, apparently. It is submitted in connection—

The CHAIRMAN. That can not be from the Geological Survey.

Mr. BRANDEIS. No; it can not be from the Geological Survey. It follows this.

The CHAIRMAN. It must be the result of that field examination.

Mr. BRANDEIS. I will undertake later to furnish the exact reference to it, Mr. Chairman.

Mr. MADISON. What is that—Exhibit 25½?

Mr. BRANDEIS. Yes. It is referred to on page 251, Mr. Chairman; in Schwartz's discussion on the nature of the proof.

The CHAIRMAN. I did not catch what you said.

Mr. BRANDEIS. It is referred to on page 251, which is Schwartz's statement as to the proof; and I should like to quote from this statement and introduce in evidence the following, which immediately follows this exhibit 25-A or 25½, as it is called. This is at the bottom of page 251, [reading]:

The map made by Mr. Rodgers, a general engineer for the Guggenheims, also shows the Cunningham "joint tunnel" is on Trout Creek and runs north, and so could not be of individual benefit to more than two or three claims. (Exhibit 24½.)

Mr. JAMES. The one referred to on page 424?

Mr. BRANDEIS. Yes.

The CHAIRMAN. That does not refer to 25½, does it?

Mr. BRANDEIS. I think that 25-A that he had reference to was properly the 25½ that Mr. Schwartz referred to on page 251; but I will make a more careful examination and call your attention to it later on.

The CHAIRMAN. Mr. Brandeis, before I forget it, I want to call your attention to page 60 of our hearings.

Mr. BRANDEIS. That we are to furnish the regulations?

The CHAIRMAN. Yes. On page 60 of our hearings, near the top of the page, it says:

The rules referred to will be printed at the close of the hearings, Saturday, January 29, 1910.

Mr. BRANDEIS. I expect to furnish that to the clerk.

The CHAIRMAN. Will you hand it to the stenographer? He just called my attention to it.

Mr. BRANDEIS. Yes.

The CHAIRMAN. Go ahead.

Mr. BRANDEIS. This July 20 letter—

The CHAIRMAN. On what page is that?

Mr. BRANDEIS. On page 425, from Fred Dennett. It reads as follows [reading]:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 20, 1909.

MY DEAR SCHWARTZ: The worst situation on the line is the one I find here. Our friend, Glavis. He regarded me with suspicion, and after talking awhile showed me your telegram assigning the coal cases to Sheridan. Said he supposed you were mad with him for talking the matter over with the Judge. Showed me his telegram to you. I talked further with him and found that he had wired to Shaw to ask Shaw to come out and assist him in these Cunningham cases, on the ground that the majority of the cases were for claims within the forest reserves in Alaska, and that Shaw had wired back that he, Shaw, was too busy and could not come, owing to the absence of Wells. I perceived that the date of this telegram was one day before the date of the telegram from you to him superseding Glavis and placing Sheridan in charge; I immediately told Glavis that this was the reason that you had wired placing Sheridan in charge; that while we liked Shaw we realized that he was the most energetic of the men in the Forestry, and that he had for the past two years been doing little else than put up jobs to dispossess our boys of the work; I also found that the law officer of the Forestry at Portland was in consultation with Glavis and had been sent here by Shaw. Now I figure that Glavis is preparing to make a cushion for himself to fall back on, and also putting himself in shape to have a great story in case Sheridan does not make good and succeed in canceling the Cunningham cases; namely, that he plead for extra time, was refused; that a new man was placed in charge who knew

nothing about the cases, thus throwing them; putting the onus on the Secretary and, I presume, myself, as being Seattle people. He also insists that he was refused Jones to help; that we took Doyle away from him; and, all told, while he looks innocently at me, yet I can see that his heart is bad, though why it should be I can not tell, except that he wanted to drag the cases out; he may be sincere, of course, in his idea that he has not been given time and opportunity. He asserts that he will help Sheridan all he can, but it is not human nature, or at least his human nature. The atmosphere is not good at all. That he is playing the Forestry there is no question; the innocent look he gave me when I told him that he was dragging in Shaw, etc., when there was no necessity was beautiful. "Why, that was directly in line with the Secretary's letter of March 2." He is also talking conservation very strongly. Glavis talking conservation! All round he is ugly, and he is preparing to be as unpleasant as he can, at least that is my solution of the situation. Now the only thing that I can see is for me to try to be back by the 15th, and then have you run out here to dig into the situation. Glavis professes the greatest friendship for you, and I think you know him better than anyone else, and this is certainly the worst situation we have. He will make about forty favorable and about five hundred unfavorable reports; the way things will commence to drop will be amusing. The Judge says: "It will all come out; Congress will have to come to the rescue." However, all the rescue that Congress gave before amounted to very little.

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Whether it would be well to modify the Sheridan instructions I can not as yet tell; will write you later. It may be all right to let things stay until you come; that you will have to come there is no question, for I think that you can get at the meat of the trouble here; it may be that I am arriving at wrong conclusions all down the line—so do not let this letter prejudice your mind.

Of course I do not wonder that he has to make adverse reports after the Attorney-General's opinion of the law; that is all right; but it is his attitude that is bothering me; it looks as if he were trying to dig pitfalls for his best friends. Write me what you think of the situation. Also write me as to whether Altizer has my itinerary; I will try and dig up my copy. In the meantime, I will be here until Sunday night; then to Portland for Monday. Leave there Tuesday for San Francisco, one day, and then Salt Lake; stay there one day, and leave the next for Cheyenne; how long there I do not know.

Best wishes.

Sincerely,

FRED DENNETT.

Then the letter on page 527.

Mr. JAMES. Right there I would like to inquire about one statement in this letter.

Mr. BRANDEIS. Certainly.

Mr. JAMES. To see if the witness knows or can give us any explanation of it. "The judge says it will all come out right." Who does that refer to—"the judge?"

Mr. GLAVIS. The only judge I knew to be associated with that at that time was Judge Ballinger.

Mr. JAMES. What did it mean by "It will all come out right?"

Mr. GLAVIS. I do not know.

The CHAIRMAN. I suppose the committee is as able to judge of that as the witness.

Mr. JAMES. Well, I thought I might ask the witness and see whether or not he had any information, having had considerable experience in this land office business. I thought perhaps he might know better about it than the committee.

The CHAIRMAN. He did not write this letter.

Mr. BRANDEIS. The next is on page 527; the letter of Schwartz to Sheridan. I will not read the whole letter.

The CHAIRMAN. Is it at the bottom of the page?

Mr. BRANDEIS. It begins at the bottom of page 527 and runs over to 530. I want to read at the bottom of page 529, the last paragraph.

The CHAIRMAN. Do you want the whole letter in evidence?

Mr. BRANDEIS. I think all of this should go in.

The CHAIRMAN. That is all right.

Mr. BRANDEIS (reading):

Every report received from Mr. Glavis in this case concludes with some statement or observation as to what future and further investigation will develop, and leaves the report in a status which precludes this office from taking any action; and he has been advised from time to time it is the purpose and intention of this office that there shall be full and complete investigation and advice prior to the final action upon these entries. It is likewise the intention of this office that these proceedings shall come to a close, and that these entries now under investigation for a period of two or three years, shall either be canceled or patented. The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries, and has given to them, his best efforts. At the same time, the proper and expeditious determination of the field investigations at present devolve primarily upon myself, and I am responsible for the result. It was with this matter in mind that my letter of October 7, 1908, was addressed to him, and that my wire of April 20, 1909, was sent, informing him that the cases should come to conclusion, so far as the investigation was concerned, within sixty days, and that he might call for whatever agents he might require; and he was likewise—and has been—authorized to incur whatever expense may be necessary in these investigations. Notwithstanding the explicit instructions contained in my telegram of April 20, 1909, and the different instructions in reference to the Cunningham case, Mr. Glavis in his letter of July 8, 1909, says that:

"Since the submission of my report of March 23 there has been no evidence secured in this group of entries, for the reason that the time allowed in which to make these investigations has been too short to complete the same, etc."

Notwithstanding Mr. Glavis's statement, the record shows that he had at his disposal the entire field force; and he also had explicit notice that I had pledged the entire field force of the department for a report in these cases at a certain time. He has failed, however, and the report can not be made.

You have been placed in charge of the Cunningham group of Alaska coal cases for the express purpose of properly completing the investigation speedily; and thereafter to conduct the hearings upon which the Government will endeavor to cancel the claims. Enough of the record has been recited to advise you that *I expect this result to be accomplished*.

You are advised now, as Mr. Glavis was advised heretofore, that you may call upon me for whatever assistance, to the extent of the field force and the funds available, you may require. If it is a matter of interviewing further entrymen, you should call for a sufficient number of agents to make these interviews *at once*. It is my opinion, however, that Mr. Glavis and his agents have curried this group of cases thoroughly, but as to that I defer to the opinion of yourself after you shall have gone through the record and conferred with Mr. Glavis. In so far as the proper completion of the Cunningham group of cases may require it, you are authorized to call upon Mr. Glavis for any personal assistance, including his own services.

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

Upon the completion of the hearings in the Cunningham cases, you will return to Denver, Colorado, and report to Chief of Field Division McEniry for further duty.

A copy of this letter is this day forwarded to Chief of Field Division Glavis for his information.

Very respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

(The letter referred to is as follows:)

Address only the Commissioner of the General Land Office.
Cunningham group of coal entries.

In reply please refer to—P-H. H. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 21, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, General Land Office, Denver, Colorado.

SIR: October 6 and 17 and November 1, 1905, Special Agent H. K. Love addressed communications to this office setting forth various alleged schemes to secure the location of coal lands in Alaska, and asking for advice in the premises.

December 11, 1905, by letter of this office to Mr. Love, the coal-land laws were, as to certain features, considered, and Agent Love directed to make investigation to prevent fraudulent entries. Subsequent correspondence not material to this case passed between this office and Mr. Love.

June 21, 1907, this office addressed a letter to Special Agent Horace T. Jones, now located at Portland, Oregon, calling attention to agents' reports as to various schemes under which coal lands in Alaska were being entered and directions were therein given that "thorough, complete, and energetic investigation be made, and that from time to time preliminary reports be submitted."

September 24, 1907, Chief of Field Division S. J. Colter, Duluth, Minnesota, was directed to make investigations at Chicago, Illinois, affecting the Alaska cases, but it is not thought that any of these entries were included within the Cunningham group.

December 28, 1907, this office addressed a letter to Chief of Field Division Glavis, Portland, Oregon, calling his attention to the fact that during the time he was on duty in this office in December, 1907, he was supplied with a complete copy of all papers, records, and files bearing upon the charge of irregularity in reference to the entry and classification of coal lands within the district of Alaska. He was likewise directed to take over the investigation of these alleged irregularities and to take the action necessary in each instance to protect the interests of the Government, and also confer with the proper United States attorney in the matter of criminal proceedings against persons liable under the law. Direction was given that separate reports on individual entries be submitted from time to time as rapidly as possible in order that action might be taken in this office without delay.

January 4, 1908, upon report received from Special Agent Love, the Cunningham group of coal entries were clear listed and referred to Division N for action upon the papers and Chief of Field Division Glavis advised thereof. Mr. Glavis wired, protesting the clear listing of the entries in question; and, under date of January 23, 1908, the entries were withdrawn from the Mineral Division and again filed in the Special Service Division of this office.

February 5, 1908, Mr. Glavis was directed to complete investigation and make immediate report on Alaska claims.

March 28, 1908, Mr. Glavis was directed by telegram to wire date when reports would be received in this office.

October 7, 1908, in a letter from myself to Mr. Glavis, he was advised—

"Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been made of these particular interests. You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally make adverse report and ask for cancellation of these entries."

And he was further advised that the claimants in what is known as the Cunningham group had concluded to stand upon the old law and ask for a patent thereunder, and that action would be deferred here until his investigation could be completed.

March 10, 1909, Mr. Glavis was asked, by wire, to submit at once reports on the present status of investigation of Alaska coal entries, and in the reports to designate the entries in one of four classes, to wit: (1) Claims wherein present information suggests further investigation necessary; (2) claims wherein investigation and evidence warrants adverse proceedings at this time; (3) claims wherein investigation warrants proceedings to patent, and (4) claims wherein you have no information; and the expense of a stenographer for two weeks was authorized him to prepare the reports in question.

April 11, 1909, Mr. Glavis was requested, by wire, to advise this office when reports called for would be received.

Reports received from Mr. Glavis in reply to the above last request were incomplete—did not contain facts sufficient to warrant this office in proceeding.

April 20, 1909, this office advised Chief of Field Division Glavis, by wire, that the Alaska coal investigations must be completed within sixty days, and he was asked to state the number of agents he would require for that purpose. He was also otherwise given authority to send the agents into any jurisdiction, and these agents have, in fact, extended their investigations from New York City to Los Angeles.

May 24, 1909, this office forwarded a letter to Mr. Glavis enclosing copy of the Secretary's letter of May 19, 1909, to this office relative to coal-land entries, and directing that reports be made in accordance therewith.

June 29, 1909, telegram was sent to Mr. Glavis:

"Cunningham entrymen elect to stand on the old law. Immediate hearing will follow. Be prepared with evidence."

And on June 30, 1909, he was further advised to submit his report on the Cunningham group, and that notice of charges would be prepared in this office.

Mr. Glavis replied, and, among other things, requested the further retention of Special Agent Jones at Seattle, which request was directly contrary to explicit understanding had between himself and myself as to the date upon which Mr. Jones would be required to return to his work at Portland, Oregon, and as a consequence he was, on June 30, 1909, advised that Mr. Jones had returned to Portland, but was subject to call on subpoena at any time necessary as a witness in the Cunningham group.

The matter of this Cunningham group was taken up expressly with Mr. Glavis by myself during my official visit to Seattle during the month of June, and it was at that time distinctly understood that reports upon the Cunningham group should be submitted July 1st to this office, which would be in accordance with information furnished by myself to the department some sixty days before, to the effect that reports in this case would be in hand by July 1st.

Subsequently, on July 1, 1909, telegram was addressed to Mr. Glavis:

"Reports must be submitted at once as per instructions and agreement. You may, of course, continue investigation. Reports wanted *now*. Will send man to Seattle to take charge of investigations and conduct cases in near future. Meantime, continue your investigation."

July 1, 1909, letter was addressed to Chief of Field Division McEniry at Denver, Colorado, relative to your detail to assist Mr. Glavis at the trial of these Cunningham cases, and there was also forwarded to him, for you, at that time a copy of the Attorney General's opinion in the matter of the Alaska coal cases under the new law.

July 7, 1909, this office addressed a communication to Clarence Cunningham, agent of the Cunningham group, requesting him to transmit written stipulation waiving action in these cases by the Juneau, Alaska, land office, and that this office appoint a commissioner to take testimony at various places where witnesses are located; that said testimony may be forwarded directly to this office for decision in the first instance, and that the various defendants will accept service of charges from this office direct; and later, on July 13, 1909, telegram was addressed to Miles C. Moore, one of the entrymen in the Cunningham group, relative to the letter addressed to Cunningham, with the further suggestion that the parties stipulate that all Cunningham cases be consolidated and proceed as one case.

July 16, 1909, Mr. Glavis was directed to indicate the towns or cities in the order in which testimony could be taken in the Cunningham group, and he was further advised that you had been assigned to assist him; and, under the same date, like advices were forwarded to Chief of Field Division McEniry for your information and direction.

Mr. Glavis did not comply with the last wire, but, in lieu thereof, stated that he had consulted with the Secretary of the Interior, who suggested that he request of this office whether the last above wire with reference to the order in which the testimony shall be taken had been sent after the receipt of the telegram from Mr. Glavis of July 6 and his further letter report of July 8.

July 17, 1909, replying to the last telegram from Mr. Glavis, he was advised as follows:

"Your wire sixteenth in reference your consultation with Secretary received. Instructions heretofore issued were made in view of your telegram sixth. Your report of eighth not at hand. Have this day wired Sheridan as follows:

"Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case with authority to call for any agents or assistance necessary to bring case to prompt hearing and close."

"You will render Sheridan every assistance, meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation can not proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearing."

The foregoing is a brief summary of the efforts made by this office to secure from its field force a final report in the Cunningham case, and to permit the office to take action looking either to the cancellation of the entries or to their approval for patent.

Every report received from Mr. Glavis in this case concludes with some statement or observation as to what future and further investigation will develop, and leaves the report in a status which precludes this office from taking any action; and he has been advised from time to time it is the purpose and intention of this office that there shall be full and complete investigation and advice prior to the final action upon these entries. It is likewise the intention of this office that these proceedings shall come to a close, and that these entries now under investigation for a period of two or three years shall either be canceled or patented. The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries, and has given to them, his best efforts. At the same time, the proper and expeditious determination of the field investigations at present devolve primarily upon myself, and I am responsible for the result. It was with this matter in mind that my letter of October 7, 1908, was addressed to him, and that my wire of April 20, 1909, was sent, informing him that the cases should come to conclusion, so far as the investigation was concerned, within sixty days, and that he might call for whatever agents he might require; and he was likewise—and has been—authorized to incur whatever expense may be necessary in these investigations. Notwithstanding the explicit instructions contained in my telegram of April 20, 1909, and the different instructions in reference to the Cunningham case, Mr. Glavis in his letter of July 8, 1909, says that:

"Since the submission of my report of March 23 there has been no evidence secured in this group of entries, for the reason that the time allowed in which to make these investigations has been too short to complete the same, etc."

Notwithstanding Mr. Glavis's statement, the record shows that he had at his disposal the entire field force; and he also had explicit notice that I had pledged the entire field force of the department for a report in these cases at a certain time. He has failed, however, and the report can not be made.

You have been placed in charge of the Cunningham group of Alaska coal cases for the express purpose of properly completing the investigation speedily; and thereafter to conduct the hearings upon which the Government will endeavor to cancel the claims. Enough of the record has been recited to advise you that *I expect this result to be accomplished.*

You are advised now, as Mr. Glavis was advised heretofore, that you may call upon me for whatever assistance, to the extent of the field force and the funds available, you may require. If it is a matter of interviewing further entrymen, you should call for a sufficient number of agents to make these interviews *at once*. It is my opinion, however, that Mr. Glavis and his agents have curried this group of cases thoroughly, but as to that I defer to the opinion of yourself after you shall have gone through the record and conferred with Mr. Glavis. In so far as the proper completion of the Cunningham group of cases may require it, you are authorized to call upon Mr. Glavis for any personal assistance, including his own services.

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

Upon the completion of the hearings in the Cunningham cases, you will return to Denver, Colorado, and report to Chief of Field Division McEniry for further duty.

A copy of this letter is this day forwarded to Chief of Field Division Glavis for his information.

Very respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

Mr. BRANDEIS. Now, on page 716 is the letter of Secretary Wilson, beginning at the bottom of page 716, to the Secretary of the Interior, which reads as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., July 24, 1909.

The SECRETARY OF THE INTERIOR.

SIR: The telegraphic report from the district forester at Portland, Oreg., regarding the Cunningham group of coal claims in Alaska, mentioned in my letter to you of July 21 as having been called for, is received. The district forester reports that he has not yet had opportunity to have these claims examined upon the ground. He further reports that four coal claims of the Cunningham group, which can not yet be designated specifically, do not contain workable coal. They should not pass to patent for that reason. The district forester recommends that an examination of the ground embraced in the other claims of the group be made to determine whether they contain workable coal. He also reports that he will send a coal expert, representing the Forest Service, to assist the experts of the Land Office in the examination of coal claims of this group in the national forest.

Until the results of this examination are available, it will not be possible for this department to present the facts. The question at issue in these cases is of such importance to the people of the Pacific coast, and the difficulties in the presentation of the government's testimony are of such a nature as to make the fullest preparation essential. Accordingly, I have the honor to request that the date for the hearing contemplated in these cases be not fixed until the examination of the ground is concluded and its results are available.

I have the honor to be, sir, very respectfully,

Your obedient servant,

JAMES WILSON, *Secretary.*

The CHAIRMAN. Now, let the next letter come in there, following this letter.

Mr. BRANDEIS. Shall I read it?

The CHAIRMAN. No; it is not necessary to read it.

Mr. BRANDEIS. All these letters, Mr. Chairman, are going in in their chronological order. The next is the letter appearing on page 531.

The CHAIRMAN. Does the stenographer understand that the letter of July 29, on that page, 719, goes in?

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, July 29, 1909.

The SECRETARY OF AGRICULTURE.

SIR: Replying to your letters of July 21 and 24, 1909, requesting delay in holding hearings involving coal-land entries in the Cunningham group, Juneau (Alaska) land district, I have to advise you that this department will gladly cooperate with your department in obtaining the material facts with reference to these claims and will take proper action when the reports are received. However, these entries have now been suspended for three years, and it is important that very early action be had relative thereto, not only because of the personal interests of the claimants, but of the vital importance, both to the people of Alaska and to the Government, that some portion of the Alaska coal deposits be available for use.

I have therefore to request that the Forest Service be directed to expedite in every possible manner whatever investigation it may desire to make, and to file its findings at the earliest possible moment.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

Mr. BRANDEIS. I am handing a list of all the letters that we want put in to the stenographer. Would you prefer that I read that list?

The CHAIRMAN. Now, go on and offer your evidence.

Mr. BRANDEIS. On page 531, the telegram of Schwartz to Dennett:

[Telegram.]

P-HHS.
Sent (red pencil).

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 21, 1909.

Commissioner FRED DENNETT,
Care Secretary R. A. Ballinger, Seattle, Wash.

Zyda: Tobildnomd has roddol from Persegri elakamidamk in Pofoser fafalaing ficacoment of the Summamkyin yoi lamko until Lunove. Cyij filatins Krifac jledo or bejahd hafel losomdrh in niddol. Figoosa Krifac to cyej hoon sebh yac babir to Cyij, it being moeccilh to todolnomo nedafo poyamt podipa figote for cusy remk torih. Cyclatim fenores denellej for Coiddro with iccaccdimdc.

(Signed) SCHWARTZ,
Acting Assisting Commissioner.

The CHAIRMAN. I suppose the telegram above in cipher is the same.

Mr. BRANDEIS. That is, I understand the translation.

The CHAIRMAN. Well, both will go in.

(The translation referred to is as follows:)

Department has letter from Secretary of Agriculture originating in Forest Service asking postponement of the Cunningham hearings until November. Shaw says Glavis wrote or wired him recently in matter. Require Glavis to show you copy his letter to Shaw, it being necessary to determine motive behind Agriculture's request for such long delay. Sheridan leaves to-morrow for Seattle with assistants.

Mr. Murphy (pencil).

Official business. Government rate.

Mr. BRANDEIS. Then there is a letter on page 427, from Dennett to Schwartz, dated Seattle, Wash., July 22, 1909, which reads as follows:

The CHAIRMAN. Is there any necessity for reading it?

Mr. BRANDEIS. I think that letter is important [reading]:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., July 22, 1909.

Mr. H. H. SCHWARTZ,
Assistant Acting Commissioner, General Land Office,
Washington, D. C.

MY DEAR SCHWARTZ: I have talked again with Glavis and find that the only communication he had with Shaw was his telegram. However, Shaw sent Pierce here, he arriving on the 19th and staying until 21st, and went over all the cases with Glavis. There are 21 claims in the forest reserve. Glavis seems to have taken up with Pierce, the law officer of the Forestry, the question of supplying a man who would be a coal expert to go in and help Kennedy, suggesting the name of Wyngate at Astoria; they have agreed, and it is a question with me whether we should now stop it or allow him to go in, 21 of the claims being in the forest, and we getting the benefit of his knowledge.

Glavis states that he was desirous of having the field investigation completed in order to get the reports as to the single tunnel done for the work on all the claims, or other data in regard to improvements which would lead to evidence showing the cooperation and intent to form a company. He also desires to get such statements as to remarks that may have been made by Cunningham showing that Cunningham was operating for a company. He hopes, with this evidence from the field and documentary evidence, to establish a prima facie case and get the benefit of cross-examining their witnesses. He states that the idea of field investigation was one which he got from you. He seems to think that further evidence was necessary and that we were unduly pressing him; he tries to evade the proposition of our offering all the help he asked, on the ground that the cases needed investigation by one head who should keep his finger on the matter all the time and investigate personally; he also states that we refused him Jones, but candidly admits that we offered him every help he might desire

otherwise. I told him that I wished he had waited until I came and not taken upon himself telegraphing to Shaw, as it occurred to me, to be calling upon another bureau to find fault with our action, and especially with a bureau which has been trying to pick flaws in our conduct of cases. I have wired Judge Ballinger, as you suggested, that under existing conditions I think it would be wrong to set these cases for hearing immediately. Will take this feature up with Judge Ballinger by correspondence.

Glavis has these coal cases on the brain and can not see anything but just one line. I have told him how it looks to us and have reminded him of everything that we have done for him and that it looks as if he were returning our favors by not standing by us as he ought to. He has not acted as you or I would act under similar conditions. It looks a little treacherous to me, this calling in the Forestry.

Received your wire about Sheridan leaving for this town. I have not told you to hold Sheridan, as I think it would be a good idea for him to go over all the papers and see what he thought of the case. If the trials are postponed until November, what do you think we had better do with him? November was evidently the date suggested by Glavis to the law officer of the Forestry in order that Kennedy might return from the field in Alaska; he could be called in earlier if he only worked on the Cunningham case, but at present that would be false economy.

I am of the opinion that it might be well for you to take a hurried run out here. If you do, I will return here to meet you at time set. I have held Glavis here until next Monday.

Very respectfully,

FRED DENNETT, *Commissioner.*

Then there is a telegram on page 74 from Dennett to Secretary Ballinger, dated July 22, which reads as follows:

JULY 22.

HON. R. A. BALLINGER,
Hermiston, Oreg.:

Advise telegraphing Schwartz authorizing him to delay issuing notices in important cases subject to our talk here until Sheridan can examine evidence obtained.

DENNETT.

Then there is a telegram from Ballinger on the same page, 74, of July 23 to Dennett at Seattle, Wash., which reads as follows:

JULY 23.

DENNETT,
United States Land Office, Seattle, Wash.:

Considering my personal reluctance to direct proceedings in Alaska coal cases you should make necessary directions to Schwartz.

BALLINGER.

Then there is a letter from Dennett to Ballinger under date of July 23, 1909, same page, 74.

The CHAIRMAN. What letter is that?

Mr. BRANDEIS. A letter from Dennett to Mr. Ballinger.

The CHAIRMAN. At the foot of the page?

Mr. BRANDIES. No; it is in the middle of the page, and it reads as follows:

HON. R. A. BALLINGER,
Secretary of the Interior, Boise City, Idaho.

MY DEAR JUDGE: I telegraphed to you yesterday advising authorization to Schwartz not to set the Cunningham cases for trial immediately. The situation is as follows: Twenty-one claims are on the forest reserve; Glavis has so advised the forester, and he has joined him in moving for a delay until Kennedy can return from Alaska with his report of the field investigation. Glavis seems to expect a showing upon the field which would indicate that all developments have been done with the evident purpose of advancing a single interest. He also desires to find out in what manner the employees were paid, and information of this kind. Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained.

I have no recollection that the matter of field investigation was taken up with me, although I am not certain on this point. Schwartz telegraphs me that the Agricultural Department has requested the postponement, and under all the circumstances I will recommend that their request be acquiesced in.

Am just in receipt of telegram from Schwartz as follows:

"President has increased special agent land office excepted places to ten, but desires to be consulted upon such appointments. Matter originated in this office.

"SCHWARTZ."

I do not know anything about this proposition, or that it had been taken up with the President.

Very truly,

FRED DENNETT, *Commissioner*.

Then, on page 531, under date of July 23, the telegram of Dennett to Schwartz, which reads as follows:

[Telegram.]

SEATTLE, July 23, 1909.

To H. H. SCHWARTZ,
*Assistant Acting Commissioner,
General Land Office, Washington, D. C.:*

November evidently suggested by Glavis, who desires report field examination before trial. If assistants for Sheridan not started, stop them and let Sheridan come alone for the present.

DENNETT, *Commissioner*.

Then, on page 716, the telegram of Dennett to Schwartz, dated July 23, which reads as follows:

SEATTLE, WASH., July 23, 1909.

H. H. SCHWARTZ,
*Acting Assistant Commissioner General Land Office,
Washington, D. C.*

Secretary desires to refrain from any action in proceedings in Alaska coal cases. I authorize you to recommend to Acting Secretary Pierce to acquiesce in request of Forestry not to set cases for hearing immediately.

DENNETT, *Commissioner*.

And July 24.

The CHAIRMAN. That is already in.

Mr. BRANDEIS. That is already in. Now, on July 26, Glavis to Dennett, page 273; it begins on page 273, but it is a long and full report, and it ends on page 276. It is only the last paragraph that I will trouble to read now [reading]:

"Matter mentioned in your wire yesterday. Affidavits transmitted 21st. No admission made by claimants."

I was therefore very much surprised to have since received affidavits and verbal statements from persons interested in the acquisition of the Alaska coal fields, in which they admit, or give every reason to believe, that they were attempting to fraudulently acquire title, and also state that such admissions were made to you personally while in Washington endeavoring to secure such legislation that would validate these fraudulent claims. Owing to their avowed friendship and admiration of you, I was unable to detect their motive in the premises, and can not, therefore, reconcile their statements to the telegram above quoted.

I shall be very glad to give this phase of the investigation my personal attention upon receipt from you of more definite information.

(The letter referred to reads as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., July 26, 1909.

Hon. FRED DENNETT,
Commissioner General Land Office, Seattle, Wash.

SIR: In accordance with your verbal instructions of yesterday, I have the honor to report the present status of the investigation of the Alaska coal cases.

During the present month I have submitted final adverse reports on the following groups:

Group.	Filings involved.
Brown.....	52
Bushnell.....	22
Christopher.....	35
Dickerman.....	6
Doughten.....	39
Dunn.....	40
Letcher.....	4
McAlpine.....	92
Mackey.....	66
Simmonds.....	34
Stracey.....	35
Watson.....	39
Total number.....	466

Further investigation is unnecessary in these cases, excepting as stated in my report covering the Bushnell, McAlpine, and Mackey groups. I desire to secure some additional documentary evidence in connection with the Michigan-Alaska Development Company. This will only require a few days.

The examination in the field may strengthen these cases, and hearings should not be set until the result of such examination is ascertained.

Favorable reports have this month been submitted on the following cases:

Group.	Filings involved.
Flint.....	2
Harkrader.....	4
Krefting.....	2
Runnells.....	3
Walsh.....	2
Warddell.....	4
White.....	4

And may therefore receive attention with a view to the issuance of patent.

Favorable report was also made on 25 of the filings embraced in the Watson group, but I have this date recommended that action be deferred thereon pending further investigation, as I am in receipt of an affidavit taken by Special Agent Andrew Kennedy containing information that warrants such action.

Final reports in reference to the following cases have not been made:

Group.	Files Involved.
Barrett.....	5
Cbesum.....	12
Cunningham.....	33
Feed.....	8
Foster.....	31
Green.....	73
Hartline.....	16
Hunt.....	12
Jeter.....	10
Kelley.....	37
McHenry.....	8
Miscellaneous.....	24
Morrow.....	4
Rathbone.....	5
Smith.....	20
Stracey.....	43
Thurston.....	8
Wells.....	12
Watson.....	23
Willoughby.....	23
Young.....	20

As I explained to you yesterday, most of the evidence in the above cases has already been secured, and it will be possible to submit final report on all of these cases prior to November 1, and on said date I shall be ready to proceed with the hearings. These cases are awaiting the result of the field investigations now being made, and by November 1 every part of this work, including the making of maps, etc., and the completion of any evidence that may be secured from those in the coal field, will be ready for final report. There is also further evidence here that must be gathered. This I can complete prior to November 1.

In order, however, to properly attend to the routine work, such as the pending hearings on other entries, field examinations, and such other routine matters requiring attention, I believe the services of an experienced special agent advisable, and, as I understand, Special Agent Charles O. Pollard's transfer from Portland has been recommended, I respectfully suggest that he be assigned here, since he has had much experience in the handling of all kinds of cases, and would also be very useful when the testimony in the coal cases is taken.

Upon your arrival here you expressed surprise that investigations of all the cases were not completed, since you had, under date of April 20, 1909, wired me that the Alaska coal investigations must be completed within sixty days, and offered to furnish me all the agents necessary to do so. I then called your attention to the fact that it was through no fault of my own that the investigations were not completed many months ago; that during a portion of April and May, 1908, I had started this investigation, with the intention of completing all the investigations before taking up any other work. The investigation that was made at that time was disclosing a great deal of fraud among the coal claimants, and, as you were advised by telegram, we were uncovering a great deal of fraud which involved a great many prominent people in the State of Washington, as well as implicating a United States Senator. You, however, directed me to postpone taking further evidence in these cases, although I advised you at that time, in reply to said instructions, to postpone action would greatly lessen the Government's chances of securing sufficient evidence to cancel these fraudulent applications.

On October 7, 1908, you directed me to again resume investigation of these coal entries, with a view to submitting final reports. It was therefore impossible to complete the investigations until this summer, on account of the deep snow covering the claims and preventing a field examination, which Mr. Schwartz, as well as myself, recognized to be very important and material to the Government. Mr. Schwartz laid great stress upon the importance of this phase of the investigation, and, as he stated, an investigation would probably show, as was indicated by the evidence already secured, that all the work done on the various groups was done with the sole intention of combining their claims and mining the coal thereon for the joint benefit of the claimants.

Upon receipt of your telegram of April 20, 1909, advising me that the investigations must be completed within sixty days, I advised on the same date that the snow on the ground would prevent field examination until July. However, I at once commenced securing evidence necessary to be obtained in the States, and this evidence

has already been secured, excepting that which can now be completed before the return of Agents Kennedy and Stoner, who are making the necessary field examinations, which I have above stated Mr. Schwartz recognized as being very material to the Government's cases, and I therefore knew that the investigations could not be completed until such field examinations were made, and, as shown by my telegram above mentioned, I knew that such examination could not be commenced, owing to the snow covering the ground, until the month of July.

You also stated that you were particularly anxious to proceed to hearing with the Cunningham group of cases and asked me whether or not we could proceed at this time, before the investigations in the field were completed. I stated to you that I was convinced this could not properly be done, for the reason that if we proceeded with the hearing at this time it would be necessary to use the claimants as our witnesses, but that if we waited for the result of the field examinations and the evidence that would be collected upon the ground, that the Government would be enabled to make a *prima facie* case upon such showing when corroborated by the documentary evidence in my possession, and also that there were four claims mentioned by Mr. Cunningham's expert and by Mr. Cunningham as not being chiefly valuable for its coal. The claims were not designated, and it was therefore necessary that a field investigation be first made in order to determine what particular claims were not chiefly valuable for their coal, and, as I pointed out to you in our conversation, by proceeding along these lines the Government having made a *prima facie* case upon such a showing, it would be necessary for the claimants to go upon the stand in their own behalf in order to make any defense at all; that if they did so the affidavits secured by me, in which they admitted an unlawful agreement, would enable the Government to cross-examine them and discredit any such testimony they might offer. And, in view of your recent telegraphic instructions directing that the hearings in the Cunningham cases be not set at this time and giving me until November to complete these investigations, I presume you were favorably impressed with my position in the premises, as you intimated from your conversation that your office has probably overlooked the importance of this feature of the investigations.

Another phase of the investigation to which I beg to most earnestly call your attention is my telegram to you dated June 23, 1909, as follows:

"Have not received affidavits left in Washington to be copied. Have any admissions been made to you by Alaska coal claimants? Answer by wire quick, and please write synopsis of such admissions. Same might aid investigations."

Under date of June 24, 1909, you replied as follows:

"Matter mentioned in your wire yesterday. Affidavits transmitted 21st. No admissions made by claimants."

I was therefore very much surprised to have since received affidavits and verbal statements from persons interested in the acquisition of the Alaska coal fields, in which they admit, or give every reason to believe, that they were attempting to fraudulently acquire title, and also state that such admissions were made to you personally while in Washington endeavoring to secure such legislation that would validate these fraudulent claims. Owing to their avowed friendship and admiration of you, I was unable to detect their motive in the premises, and can not, therefore, reconcile their statements to the telegram above quoted.

I shall be very glad to give this phase of the investigation my personal attention upon receipt from you of more definite information.

Then there is a memorandum—perhaps I ought to read what follows:

MEMORANDUM.

In reply to your last query I have no recollection of an explicit admission by Mr. Harriman that the Alaska Petroleum Coal Company was organized for the purpose of taking over the coal claims, or was to take the coal claims, or was to have interest in the coal claims. My recollection is, in talking with him and with other Alaskans, there was a virtual admission that these claims were to be operated together.

My attention was first called to the coal feature of the Petroleum Oil and Coal Company, as I recollect it, by the production of an advertisement in a magazine advertising the coal company as being in possession of coal claims shown me by you in Portland in 1908. The conversation with Harriman was, in my recollection, a general one and not a specific one.

(Sent with foregoing by Mr. Dennett.)

What was that memorandum, do you know anything about that, Mr. Glavis?

Mr. GLAVIS (after looking at Senate Document 248). That is a statement from Mr. Dennett—he started to dictate a reply to that letter in my presence, and got that far with it.

Mr. BRANDEIS. That was Mr. Dennett's own dictation, was it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Did he send that to you, Mr. Glavis?

Mr. GLAVIS. No, sir. I was present with him when he dictated it to a stenographer.

Mr. BRANDEIS. Was it signed by Mr. Dennett?

Mr. GLAVIS. He started out to dictate quite a letter about it to answer my statement. Mr. Brandeis should have read a telegram before that.

Mr. DENBY. Is this authorized by Mr. Dennett; that memorandum?

Mr. GLAVIS. Yes, sir; he dictated it.

Mr. DENBY. I know, but did he send it?

Mr. GLAVIS. No, sir.

Mr. DENBY. How does it come in here then?

Mr. GLAVIS. I do not know; he put it in as a part of his answer in the statement.

The CHAIRMAN. I think, but I am not sure—Mr. Brandeis will correct me if I am wrong—I think that is a part of Mr. Dennett's own statement, is it not?

Mr. COTTON. It is a part of Mr. Schwartz's statement, from the record.

The CHAIRMAN. Is it not a part of Mr. Dennett's answer in response to the President?

Senator FLETCHER. I think it is part of Mr. Schwartz's answer.

Mr. GLAVIS. No; it is a part of Mr. Dennett's answer.

The CHAIRMAN. That is my impression; it is a part of Mr. Dennett's answer, so that he practically admits it to be his own.

Senator ROOT. It is a part of Mr. Schwartz's report.

Mr. BRANDEIS. You were going to add something in regard to that. I do not know whether you answered Mr. Denby's question or not.

Mr. DENBY. Yes. I was simply trying to find out how this fragmentary report got into the record at all.

Mr. BRANDEIS. The next is a telegram on page 532, in the middle of the page, from Mr. Dennett to Schwartz, dated July 26, and reads as follows:

[The Western Union Telegraph Company.]

JULY 26, 1900.

Received at 182ch xa g 86 Collect GR
BxSeattle, Wash., July 26.

H. H. SCHWARTZ,

Answered (pencil).

Acting Asst. Commr., General Land Ofc., Washn., D. C.:

Sheridan concurs in advisability waiting arrival of Kennedy and Stoner from Alaska. Could proceed to trial October fifteenth and make report other cases after trial present case. Other alternative, recall Kennedy and Stoner from Alaska after examination claims in question without examining other claims. Latter course hardly desirable. If concurred in, return Phillips and Smith to Denver. Glavis reports ability overtake his work first of year. No necessity for you to come.

DENNETT, *Commissioner.*

Mr. Murphy (pencil).

Copies by FRL.

What does that mean—"Glavis reports ability overtake his work first of year?"

Mr. GLAVIS. I told Mr. Dennett that with the present force I could complete all the Alaska field investigation and the Alaska investigations in the States, and also bring up the work—the current work—right up to date by January 1 of this year.

Mr. BRANDEIS. Then there is a letter from Mr. Sheridan, on page 532, the substance of which is communicated in Mr. Dennett's letter of January 26. I call attention only to the last paragraph of that letter, which appears on page 534, in which Mr. Sheridan says:

I desire to state that in reaching my conclusions on this matter and in making my recommendations, I have been influenced solely by the facts in the case as they appear from the record evidence available and from my own best judgment of the matter. Mr. Glavis has in no way attempted to influence me on this matter and I had made up my mind as to what I thought best to do in the premises before I conferred with him on this case in detail, hence I wish to assume entire responsibility for the recommendation which I make in this communication.

Respectfully submitted.

The letter reads as follows:

83766. Registered G. L. O., Aug. 2, 1909. Referred to ——. Assigned to ——. Answered by ——. Noted. File.
(Pen) Sheridan, James M. (S. A.)

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Seattle, Wash., July 27, 1909.

Mr. H. H. SCHWARTZ,

Chief of Field Service, G. L. O., Washington, D. C.

SIR: I arrived in Seattle on the afternoon of the 24th inst., and immediately conferred with Mr. Glavis on the Cunningham case. Mr. Glavis turned over to me all correspondence on file in his office relative to this case, and I immediately proceeded to study the same with a view to deciding what action should be taken in the premises.

The correspondence is rather voluminous and required my time until yesterday to digest its contents. After conferring with Mr. Glavis fully on this matter and weighing carefully all of the record evidence in his possession, the following appeared to be the principal points to be considered in this case:

First. As regards the value of the record evidence in the possession of Mr. Glavis:

There are a number of affidavits from the entrymen which corroborate the original affidavit of Mr. Cunningham, dated March 6th, 1908. In fact, Mr. Glavis sent copies of this affidavit to various of the coal claimants whom Mr. Cunningham says he represented and their corroboration of the Cunningham affidavit was made on a sheet attached thereto and then returned to Mr. Glavis. This procedure was observed generally. The affidavits show a practically uniform concurrence in the statements made by Mr. Cunningham in his affidavit, already referred to. Mr. Cunningham says:

"We have an understanding that when the patents have been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea when titles were secured we would combine our claims and work the coal field for ourselves."

This is plainly declared to be illegal and in direct violation of the law, as will appear from the opinion of the Attorney-General dated June 12, 1909, and addressed to the Secretary of the Interior, from which I quote:

"3. A verbal agreement by two or more entrymen made prior to the initiation of the entry that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike."

Regarding which the Attorney-General says:

"The consummation of any of the agreements or contracts mentioned in any of the three above-quoted paragraphs would have vested in one association or corporation the title to the lands embraced in several entries is a clear

violation of section 2350, R. S., which provides that 'the three preceding sections shall be held to authorize only one entry by the same person or association of persons.'"

The record evidence of course is strong on this point, and if there were no conflict all would be well, but an affidavit of Horace M. Davenport, dated July 10, 1908, states:

"If there was any company in connection with the coal claims I was not a party to it, and know nothing about any company or *any plan to group the several claims*. Mr. Cunningham never made any proposition to me that he would sell my claim and get one-eighth of the profit derived from same."

Furthermore, in an additional affidavit of Mr. Cunningham, dated September 4, 1908, Mr. Cunningham proceeds to explain away the significance of the notation made by him in his journal concerning his relation with the coal claimants in this case.

From the foregoing it is apparent that there is going to be an entire change of front from what was originally set out in the first Cunningham affidavit and that, beyond a question, the claimants will be coached in accordance with Cunningham's desire in this matter. This will give an entire conflict and would leave the case, as regards the record evidence, in a very jumbled condition.

Second. As regards the Government's witnesses available at this time in case a hearing were to be immediately taken up, Special Agents S. M. Stoner and Andrew Kennedy are absent in Alaska at present, and from what I learn from Mr. Glavis their instructions were not such as necessarily to have them complete the examination of the Cunningham group before considering several other groups under investigation there also; hence it is not at present known whether or not they would be of any use if immediately called, as it may well be, but that they have spent their time examining other than the Cunningham group to date. Again, with the best possible speed, they could hardly return to Seattle before a month from now. Timber Expert Ames, of the Forestry Department, I am informed, is now in Alaska and on his way to the Cunningham group. Now, inasmuch as four of the thirty-three entries in this Cunningham group were taken up for their timber rather than their coal values—for it is conceded by the parties interested that they are not valuable as coal lands—the condition of these four entries as regards their timber would be a material piece of evidence; for it appears from the record evidence now in the possession of Mr. Glavis that the entrymen who took up these four entries have been similarly assessed with those who took up the coal entries. Therefore it is logical to assume that, the assessment being the same and the values of the lands decidedly different, these timber lands, if such they be, were taken up as a community proposition to be utilized by all of the claimants in connection with their general scheme of jointly developing the entire tract for all. If this assumption be correct, it is, of course, very desirable to establish the exact condition of these four entries as regards their timber. Again, from what I can learn from the record evidence in the possession of Mr. Glavis, and which is supported by his own personal opinion of the situation, it appears that nearly all of the money expended was on one general tunnel, which necessarily would be of immediate benefit only to the entry upon which it is constructed and perhaps a few adjoining entries. It will be apparent to you from this situation that a map of the actual conditions on the ground as regards development and timber is essential to establish the Government's contention. From the record evidence it appears that Mr. Cunningham will contend that thirty-odd openings have been made on these entries, his aim being to show that they were individual and independent concerns. Now, if, as a matter of fact, a map made on the ground shows this not to be the case, and that all development properly so called was upon one main tunnel, you can realize how strong will be the Government's case, and how easy a matter it will be to defeat these entries.

From my past experience in conducting hearings, and after a careful study of the record evidence available, I can readily see what the plan of the defense is. Should we proceed to the hearing without the assistance of an engineer and coal expert, such as Mr. Kennedy is, they might readily contend many things to strengthen their case which we would be unable to refute for want of a thorough knowledge of the actual conditions on the ground. This, of course, would prove a serious impediment to the success of our contention; and, inasmuch as there are over five thousand acres of land involved, most of which is conceded to be valuable coal land, I feel that it is only safe and consistent to have an exhibit at the hearing setting out developments, improvements, and

timber conditions on this group before proceeding. This is my very best judgment on the matter; and in view of the importance of winning this first Alaska case—for I am convinced that the Government should prevail in it—I do not care to recommend an immediate hearing and then entirely disappoint you in the result.

I fully realize your desire to urge this matter to a speedy conclusion, and it is my aim to cooperate with you most heartily to this end; but I am sure that when you have considered the points set out in this letter, and the importance of this case, that you will agree with me that it would not be desirable to hazard a hearing when the result will necessarily be so doubtful. As a matter of fact, all I could do at present, were you to immediately appoint a United States commissioner and direct a hearing, would be to put Mr. Glavis on the stand, introduce the record testimony, and then depend upon the cross-examination of about thirty-three coached witnesses to establish the Government's contention. You will agree with me, I am sure, that this would not be wise.

Mr. Glavis suggests that the hearing be set for about the 15th of October. He and I are agreed that it will be promptly finished when we have this field evidence from Alaska at hand. Furthermore, were Special Agents Stoner and Kennedy to be immediately recalled, assuming that they were ready to testify on this Cunningham group, this would necessarily postpone the completion of field investigations on all of the other Alaska coal entries—which Mr. Glavis informs me are about nine hundred in number—until next summer. This clearly would occasion great expense and additional delay in the whole Alaska situation. I merely mention these points as sidelights on the Cunningham case and do not desire to be misunderstood as volunteering any advice on the matter outside of its significance in that respect. Mr. Glavis and I are of the opinion that even if we await the arrival of this Alaska testimony we can complete the hearing on the Cunningham group and place the record before the commissioner for his decision before the end of December of this year, providing, of course, no untoward event retards us and that the other side does not resort to dilatory tactics. I realize the Government has the whip-hand in these hearings and, of course, if I am called upon by you to conduct same, I will drive the matter as hard as consistently can be done.

I respectfully recommend that the case be postponed and hearing not set until such time as the Alaska testimony is at hand and ready to be used in the hearing.

There is no additional record evidence to be obtained at present, as far as we know, and hence it would be unnecessary to keep Special Agents Smith and Phillips here for that purpose.

I desire to state that in reaching my conclusions on this matter and in making my recommendations I have been influenced solely by the facts in the case as they appear from the record evidence available and from my own best judgment of the matter. Mr. Glavis has in no way attempted to influence me on this matter and I had made up my mind as to what I thought best to do in the premises before I conferred with him on this case in detail, hence I wish to assume entire responsibility for the recommendations which I make in this communication.

Respectfully submitted.

(Signed)

JAMES M. SHERIDAN,
Special Agent, G. L. O.

JMS/ES.

(PEN) AUG. 1/09.

I concur.

H. H. SCHWARTZ,
Chief Field Service, G. L. O.

Mr. BRANDEIS. Now, on page 427, the letter of July 27 from Dennett to Schwartz. I do not know that it will be necessary to read the whole letter.

The CHAIRMAN. At the foot of the page?

Mr. BRANDEIS. It begins at the foot of the page and runs onto page 428.

The CHAIRMAN. I do not think there is any need of reading it unless there is some particular paragraph that you desire to call attention to.

Mr. BRANDEIS. I do not know that it is necessary to read it.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 27, 1909.

MY DEAR SCHWARTZ: Glavis has written me a letter giving the history of the coal cases and running throughout with innuendo against me; I think he has got me convicted of conspiracy in his mind. He certainly is a wonder; I would not have his mind for all the money in the world. I quote from the last of the letter.

"Another phase of the investigation to which I beg to most earnestly call your attention is my telegram to you dated June 23, 1909, as follows:

"Have not received affidavits left in Washington to be copied. Have any admissions been made to you by Alaska coal claimants? Answer by wire quick, and please write synopsis of such admissions. Same might aid investigations."

"Under date of June 24, 1909, you replied as follows:

"Matter mentioned in your wire yesterday. Affidavits transmitted 21st. No admissions made by claimants."

"I was, therefore, very much surprised to have since received affidavits and verbal statements from persons interested in the acquisition of the Alaska coal fields, in which they admit or give every reason to believe that they were attempting to fraudulently secure title, and also state that such admissions were made to you personally while in Washington endeavoring to secure such legislation that would validate these fraudulent claims. Owing to their avowed friendship and admiration of you, I was unable to detect their motive in the premises and can not, therefore, reconcile their statements to the telegram above quoted.

"I shall be very glad to give this phase of the investigation my personal attention upon receipt from you of more definite information.

"Respectfully,

L. R. GLAVIS."

I told him that I had no recollection of an explicit admission by Mr. Harriman that the Alaska Petroleum and Coal Company was organized for the purpose of taking over the coal claims; or was to take the coal claims; or was to have an interest in the coal claims. My recollection is, in talking with him and with other Alaskans, there was a virtual admission that these claims were to be operated together. That my attention was first called to the coal feature of the Petroleum and Coal Company, as I recollect it, by the production of an advertisement in a magazine advertising the oil company as being in possession of coal claims, shown me by Glavis in Portland in 1908. The conversation was, in my recollection, a general one and not a specific one—that is, with the coal claimants.

It is possible that all these coal men talked generally with me at the time legislation was endeavored to be secured: and you know that I stated very generally that I could not patent unless legislation were secured; you also know that I have stated the same after the Attorney-General's opinion. It appears that after Pierce gave his opinion he went to the claimants and got very liberal statements from them; whether he showed the opinion or not I do not know; he got them any way with the knowledge of the Attorney-General's opinion. All of which is beautiful, but not a game I could play. What talk they gave me when in Washington I do not know, but it certainly was not such that I would constitute myself an investigating committee, although it might place me in a position where I would not issue patents without explanation.

Now what do you think of this? Is the boy nutty? The rest of the letter is as bad, and it puzzles me to think what sort of a kid he is. I will show it to the Secretary when I meet him, and then send it on to you. If necessary I will take it to Taft to explain any relation which I have had with the matter. As a matter of fact the thing pains me more than anything else. Can you analyze it?

Sheridan and the other two will go to-morrow; Sheridan will hold himself in readiness to take the cases up later.

Best wishes.

Yours, truly,

FRED DENNETT.

Mr. BRANDEIS. I think there is another letter.

Senator ROOT. At the foot of page 535; should that letter come in? He just put in Mr. Sheridan's letter, and this is Schwartz's answer.

The CHAIRMAN. Yes, sir; I suggest that the letter of Mr. Schwartz, commencing on page 535 and ending on page 536, be put into the record after the letter of Mr. Sheridan, on pages 532, 533, and 534.

Mr. BRANDEIS. That and all the other letters are going in.

The CHAIRMAN. I want the one letter to follow the other.

The letter referred to is as follows:

P-HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 3, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Washington.

SIR: I have your letter of the 27th ultimo, in reference to the status of investigation involving the Cunningham group of coal entries in Alaska, and note your opinion that a proper presentation of this case will necessarily await return of Special Agents Kennedy and Stoner from Alaska, and that it is expected the taking of testimony may begin on October 15.

I concur in your letter, and you will continue in charge of the case and bring it to such state of completion as will enable the Government to properly present all the facts. In the meantime this office will arrange for stipulation between the Government and the Cunningham group for the taking of testimony before a commissioner and for the consolidation of all the claims, as to which matter you are directed to reply to my telegram of July 16, 1909, to Mr. Glavis, requesting the names of the towns and the order in which it is desired on the part of the Government to take testimony, which telegram Mr. Glavis has neglected to answer.

Respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

CWN.

Mr. BRANDEIS. These letters will all go in in chronological order. I have only read a few of the very many letters which tell the whole story as it goes along.

There is another letter dated July 27, which I want to read, which I think is omitted from that list.

The CHAIRMAN. On page 427, is it not?

Mr. BRANDEIS. On page 49, and it is dated July 27, Dennett to Schwartz, and it reads as follows:

EXHIBIT 16.

SEATTLE, WASH., July 27, 1909.

Mr. H. H. SCHWARTZ,
Acting Assistant Commissioner General Land Office,
Washington, D. C.

MY DEAR SCHWARTZ: My attempt to intercept Phillips and Smith was futile, as they arrived here. I would have telegraphed you earlier, but did not realize until your last telegram that anyone except Sheridan was coming. Sheridan has gone over the cases thoroughly and thinks that the evidence which it is hoped to gain from Kennedy's visit to Alaska will be very material, and therefore it is the best to postpone until October 15. I have concurred, anticipating your acquiescence by the character of your telegram to me. The forestry can be blamed for the action in the matter. I hoped to receive a telegram from you in answer to mine of yesterday.

The rest of my trip will be on quick time, with the exception of perhaps a day or so at Lincoln, if I conclude to go in the 640-acre country.

Sheridan has taken charge of the Cunningham cases, and impresses me very favorably. I think he can handle it against any rival they may bring against him. The rest of the Alaska cases are in a bad mess. Glavis is very much enthused on the proposition of canceling them all and getting the lands back in cold storage, and this is just about what will happen unless Congress helps out.

I presume you have my itinerary now from Altizer. I will probably run ahead from now on of schedule time.

Tennenat, who used to be a partner of Ballinger, says that six months ago, namely, February, they filed the application over the Colville, in Okanogan County, this State; he says they have heard nothing at all about it. I wish you would look this up and have him advised.

Very respectfully,

FRED DENNETT.
Commissioner.

You stated, I think, Mr. Glavis, that you telegraphed to Mr. Shaw on this matter. Will you tell us now what you did later; what followed that, as far as it has not already been narrated?

Mr. GLAVIS. Well, it was about that time that I again saw Mr. Heinny; he had been in Seattle, and I told him about my telegram to Mr. Dennett, asking to be furnished with any information that he had received that these Alaska coal claims were fraudulent, and his reply was that he had not received any, and then afterwards I secured affidavits from several of the entrymen stating that they had told Mr. Dennett that they had an understanding among themselves to form a company. I did not know what to do about it. Mr. Heinny said: "When Dennett comes out be very frank with him, and tell him that you were much surprised; and see what he has to say." And so that was the reason that I handed Mr. Dennett that letter of July 26, so that if the people were not telling the truth, or if he had any explanation to make to reconcile those statements, I wanted to find it out and straighten the matter for him.

Mr. BRANDEIS. How did you come to consult Mr. Heney? Had you been associated with him?

Mr. GLAVIS. Well, I had been to some extent.

Mr. BRANDEIS. In what cases?

Mr. GLAVIS. Well, I made a report recently on the Binger Hermann case that he was interested in.

Mr. BRANDEIS. You mean that he acted as attorney for the United States?

Mr. GLAVIS. He is trying that case now. I just went over the case about a year ago. I met him in the spring, when I first started the investigation, and told him about their hurrying me on the work, trying to get me to cover the United States and interview six or eight hundred people in two months' time, on so many different conspiracies, and as the result of that I went to Mr. Heney when he was in Seattle.

Then Mr. Dennett arrived about July 20, and the first day I arrived we were talking about some of his personal affairs, and he was having some trouble about a piece of real estate there in Seattle, and I told him I thought "you would straighten that out, Mr. Dennett. Mr. Behring told me that he had written you and fixed that up for you." He was going to have some trouble with the city about some condemnation proceedings. He said: "No; I don't know Mr. Behring." I said: "Mr. Behring was in the Hunt group, and he told me he had written you." And Dennett said: "No; I don't know Behring."

The next day, I think it was, or the day after, Behring had him out to lunch in Seattle. And then Mr. Spalding, who used to be Mr. Dennett's private secretary when he was chief of the field division out in Seattle—Dennett had asked me to let him use Spalding to do his stenographic work while he was there in Seattle, so I did; and Spalding came around about the second day that he was there and

told me that Dennett was writing funny kinds of letters about the coal claims, and then I requested him to make copies of what he was writing, because I thought, in view of all these other things that were happening, one after another, that there was something wrong, and I thought it was my duty to get it. At my request Mr. Spalding used to write up these letters, which have been read into the record here, from his notes at night.

Mr. BRANDEIS. Mr. Glavis, did you get any information in the course of these coal investigations of Mr. Ballinger acting for any other persons than those that you have already mentioned?

Mr. GLAVIS. Oh, yes; about the 1st of July, or in July—

Mr. BRANDEIS. You mean July, 1909?

Mr. GLAVIS. Yes, sir. I secured an affidavit of a man by the name of Harry White.

Mr. BRANDEIS. Where did he live?

Mr. GLAVIS. He lives in Los Angeles, Cal., now; he used to be mayor of Seattle, Wash. In his affidavit he told me of some other man that Mr. Ballinger was representing—that is, he stated he was representing and had done some work for them in the Green group, as I recall it, and also for one Congressman in the Green group. But the work that he had done for this Congressman in the Green group he did after the passage of the act of May 28, 1908; it was along in—well, I think he said it was in June or July; sometime in there.

Mr. BRANDEIS. That is what appears in this affidavit?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And where is the affidavit?

Mr. GLAVIS. It ought to be in Seattle.

Mr. BRANDEIS. In the land files?

Mr. GLAVIS. Probably one has been sent here now.

Mr. JAMES. Did he say he was employed in the case as an attorney?

Mr. GLAVIS. He said that he attended to the work for this Congressman—to secure this coal claim for him and bring it into a company that was being formed under this act.

The CHAIRMAN. Whom did he tell you was acting for the Congressman?

Mr. GLAVIS. Mr. Ballinger.

Mr. JAMES. What group—was that in the Green group?

Mr. GLAVIS. There was another one in the Green group.

Mr. BRANDEIS. Was it the same Congressman or another Congressman that you have mentioned before?

Mr. GLAVIS. No; it was another one.

Senator FLETCHER. Who was that, Mr. Glavis?

Mr. GLAVIS. That was Congressman Kinkaid, of Nebraska.

Senator FLETCHER. Now, with reference to these letters, you say Mr. Spalding gave you copies of them, and they have been read in the record. What letters do you refer to?

Mr. GLAVIS. The letters that Dennett had written to Schwartz, and the telegrams and the letters to Judge Ballinger, and that sort of letters.

Senator FLETCHER. The letters that he wrote while out in Seattle to Mr. Ballinger?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. That is, they were written from the land office there?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Did Mr. Schwartz or Mr. Dennett know that you had copies of those letters?

Mr. GLAVIS. No, sir; the first time I knew that was when the President furnished Judge Ballinger with the evidence that I had furnished him. The report that I furnished him contained them.

Senator FLETCHER. The report that you furnished the President included these letters?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. And they are the same letters as sent out in the report that Mr. Dennett made?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Or that Schwartz made?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. You stated your interview with Mr. Heney. In consequence of the advice that Mr. Heney had given you, what else did you do in this matter?

Mr. GLAVIS. The next trip I took, then, I went down to Portland about July 28 or August 1, to make some investigations in the Alaska coal cases, and while there I wrote Mr. Schwartz a personal letter, telling him that I supposed Dennett would write him of my having confronted him.

Senator FLETCHER. You do not have to state the contents of that letter, because it appears here at page 79.

Mr. GLAVIS. Yes; that is the one.

Senator FLETCHER. That is the letter that you refer to?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Do you want to put that in?

Mr. BRANDEIS. Yes, sir.

(The letter is as follows:)

THE PORTLAND,
Portland, Oreg., July 31, 1902.

DEAR SCHWARTZ: Dennett and I had quite a talk on the coal cases, especially that part showing him up. He has no doubt written you stating that I am trying to involve him, etc. I want you to weigh the facts and determine whether my action was not the best way in which to present it—think of the other methods that could have been followed. He realizes that he has not done right. I could go into details and tell you many things, but I shall not do so because the purpose of this letter is not to influence you against Dennett; however, I do not want him to impair our friendship, which I prize very highly, as I have very few real friends. I again do not wish our friendship to influence you in doing your duty officially.

Keep out of the cases; if possible let Dennett fight his own battles.

It is my opinion that neither Dennett nor B. will last long, and surely not Dennett—he can not remain in. Now under such circumstances, why not you try for the place? I am quite sure you can win out. In other words, Schwartz, you have known my opinion of D. for a long time, and as he is in a tight place at present he will be very apt to try to place the blame on some one else.

Your friend,

LOUIS. (R. GLAVIS.)

Mr. GLAVIS. In that letter I told him I didn't think Dennett could remain in the service.

Mr. McCALL. When was this service which somebody said Mr. Ballinger had rendered to Kinkaid?

Mr. GLAVIS. It was after the passage of this act of May 28, 1908, as I recall it.

Mr. MCCALL. That is, it was in the interval while he was out of the Land Office and before he became Secretary of the Interior?

Mr. GLAVIS. Yes, sir.

Mr. MCCALL. And who was it you said told you that?

Mr. GLAVIS. Harry White made an affidavit to that effect.

Mr. MCCALL. And where did you say that affidavit was?

Mr. GLAVIS. It is either in Seattle, Wash., in the field division office, or in Washington, D. C., in the General Land Office.

Mr. DENBY. That was when Mr. Ballinger was practicing law in Seattle?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. What was the character of the employment—that is, what was he employed to do? You stated it generally, but now state it more particularly.

Mr. GLAVIS. He was employed to examine some papers, I think, preparatory to buying out a coal claim in the Green group of claims, and he was buying his interest out in that claim, and was then going to put his claim with others in a consolidation, under the act of May 28, 1908.

Mr. MADISON. Well, now, was there anything in that transaction that was wrong?

Mr. GLAVIS. No, sir; there wasn't anything wrong at all in that transaction; unless he had had some agreement or interest prior to the passage of that act of May 28, 1908, there would not be anything wrong at all.

Mr. MADISON. In other words, Kinkaid would have had a right to buy an assignment of a claim that had been legally entered, and would then have a right to take advantage of the law of Congress of May 28, 1908?

Mr. GLAVIS. Yes, sir; and it was after the passage of that act, I am quite sure; I know it was.

Mr. MADISON. So that there was not anything, either on the part of Mr. Kinkaid or Mr. Ballinger in that particular instance, that was wrong in any way, that you know of. If there was, tell it, because that is what we want to know.

Mr. GLAVIS. That was part of the work which he did for the Green group during the period he was out of office and which he had knowledge of while commissioner.

Mr. BRANDEIS. It has a bearing on the statement of Mr. Ballinger that he only acted in the Cunningham cases in the matter of incorporation?

Senator FLETCHER. You have gone down to Portland now, and you wrote this letter of July 31, from Portland, to Mr. Schwartz. In that letter you say: "Dennett and I had quite a talk on the coal cases, especially that part showing him up." Will you state in detail now what your conversation was and what you meant by that?

Mr. GLAVIS. Well, it was the result of my report to Mr. Dennett of the 26th of July, I think, in which it appears that he had been given information by some coal claimants that their claims were fraudulent. He had never told me about that at all, even after I had telegraphed him asking if any such statements had been made to

send them to me, because all the information of that character in investigating frauds that I could get would help me that much more to uncover it; and he replied that no such admissions had been made to him. After that telegram was written, however, there were affidavits made before Mr. Jones and myself that they had told him about their fraudulent transactions. He had never told me about it. I did not think that was protecting the people's interests very well.

Senator FLETCHER. Did you mention that to him?

Mr. GLAVIS. Yes, sir; I called that to his attention in a letter which I handed him personally.

Senator FLETCHER. What did he say about it?

Mr. GLAVIS. Well, he dictated that little memorandum that was read, which follows the letter, I think, and was very much confused and was very contradictory in his remarks. As soon as we got through Mr. Spalding, the special agent, who was a clerk to Mr. Dennett at the time in Seattle, heard everything that was said between Mr. Dennett and myself. In fact, at the time I presented him with that letter I felt that the man was crooked, and I had told Spalding to take down any statements which I would make to him and any statements which Dennett would make to me, so we would have a record of it, but he did not do it. However, as soon as I got through I went to my office and wrote down, as nearly as I could, what was said, and Mr. Spalding read it as soon as I had it written out and corroborated that that was a synopsis of the statements. That is in the record, but I do not know just where.

Senator FLETCHER. Can you turn to that? It has not been offered, has it?

Mr. BRANDEIS. The letter itself of July 26 has been offered.

Senator FLETCHER. But this memorandum?

Mr. BRANDEIS. This memorandum should be offered, certainly.

The CHAIRMAN. What page is it on?

Mr. BRANDEIS. Isn't it annexed as an exhibit?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. I will introduce in evidence Exhibit 18, which appears on page 52. Shall I read it?

The CHAIRMAN. It is quite long.

Senator FLETCHER. I do not care for it.

The CHAIRMAN. It will take time to read it.

Senator FLETCHER. That is a memorandum of the conversation which you made and which Mr. Spalding agreed to?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. And this Mr. Spalding is now living in Seattle?

Mr. GLAVIS. No; he is still in the government service, but is located at Cheyenne, Wyo.

Mr. BRANDEIS. That was July 27? And then the letter that has been referred to, your letter to Schwartz, in which you suggested he would be the proper man for commissioner, was on the 30th?

Senator FLETCHER. The 31st. There is another statement in that letter: "I want you to weigh the facts and determine whether my action was not the best way in which to present it." What did you refer to in that connection—presented you meant to whom?

Mr. GLAVIS. I meant to present it to Dennett.

Senator FLETCHER. In the way you did?

Mr. GLAVIS. Yes, sir; I thought that I was fair to him in it; if he had any explanation to make he could have easily made it.

Mr. BRANDEIS. What did you do after that?

Mr. OLMSTED. Just one moment, if you will permit me. Mr. Glavis, in that letter of July 31 to Mr. Schwartz you say, "He"—meaning Dennett—"has no doubt written you." You refer there to the copy which you had of Spalding's stenographic notes of the letter dictated by Dennett?

Mr. GLAVIS. No; I knew that he had already sent these letters, but I thought he had also written him about this conversation that Dennett and I had had over my letter to him on or about July 26.

Mr. OLMSTED. That letter was dictated on the 20th of July, and again on the 30th of July those letters were dictated which you put in evidence as having received copies of from Spalding?

Mr. GLAVIS. No; there is no letter dated July 30, I think, that I stated I had received. That was written somewhere else.

Mr. OLMSTED. July 20.

Mr. GLAVIS. The letters that Spalding gave me were furnished in my report to the President; those are the letters of mine.

Mr. OLMSTED. What are the dates of those letters?

Mr. GLAVIS. I do not know just what they are. There is a letter of July 27 on page 49, and there are two letters on page 48.

Mr. BRANDEIS. What are their dates?

Mr. GLAVIS. One of July 22 and one of July 23.

Mr. OLMSTED. Well, then, when you wrote on July 31 saying that "he has no doubt written you," you knew that he had written, because you had seen copies of the letters.

Mr. GLAVIS. I knew that he had written those letters, but I never saw the letters that Dennett wrote to Schwartz relative to my letter of July 26 and the conference of July 27.

Mr. OLMSTED. You knew that he had written those letters of which copies had been put in evidence?

Mr. GLAVIS. Yes; I knew he had written those.

Mr. OLMSTED. You say in this letter: "It is my opinion that neither Dennett nor B. will last long." What did you mean by "last long?"

Mr. GLAVIS. I didn't think they would be able to remain in the service long.

Mr. OLMSTED. Whom did you mean by "B?"

Mr. GLAVIS. Ballinger.

Mr. OLMSTED. Was that your individual opinion, or was it formed in part as a result of conference with others?

Mr. GLAVIS. I had not conferred with anybody about it at that time.

Mr. OLMSTED. Had you heard anyone else express that opinion?

Mr. GLAVIS. No; I don't think I had.

Mr. OLMSTED. Or had any talk with anybody on the subject?

Mr. GLAVIS. No, sir; I don't think I did.

Mr. OLMSTED. Then you had solely and alone formed the opinion that Mr. Ballinger could not last long?

Mr. GLAVIS. No, sir.

Mr. OLMSTED. Well, you say so here.

Mr. GLAVIS. That is what I say; that was my opinion.

Mr. OLMSTED. And that was formed solely by yourself alone without conference or conversation with others?

Mr. GLAVIS. Yes, sir. That was my sole opinion at that time; perhaps others might have had that same opinion.

Mr. OLMSTED. But they had not expressed it to you?

Mr. GLAVIS. No, sir.

Mr. OLMSTED. Had you expressed it to any others?

Mr. GLAVIS. I do not remember having expressed it to any others or any others having expressed it to me at that time.

Mr. OLMSTED. Then you had singly resolved that he should not last long?

Mr. GLAVIS. No; I felt his actions would prevent him from lasting very long.

Mr. OLMSTED. Well, that is what you refer to in that letter?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. That is all.

The CHAIRMAN. It looks from this that you were more anxious to make a point against these officers than even against the Alaska coal claimants.

Mr. GLAVIS. What document is that?

The CHAIRMAN. From this letter, on page 76, it looks as though you were more anxious to make a point against these two officers, Ballinger and Dennett, to get them out of the service, than you were even to cancel the coal claims in Alaska.

Mr. GLAVIS. No; I think the Alaska coal cases would be better protected with them out of the way.

Mr. GRAHAM. Mr. Glavis, had you any personal ill will or personal ill feeling toward Mr. Ballinger or Mr. Dennett at that time?

Mr. GLAVIS. No, sir. They had always treated me very nicely; Mr. Ballinger always treated me nicely.

Mr. GRAHAM. Were the things referred to by the chairman and other matters of comment from you about them based in any way or connected in any way with your personal feelings toward them or either of them?

Mr. GLAVIS. No, sir. I was guided solely from an official standpoint.

Mr. JAMES. You spoke of Mr. Ballinger having been employed in a case in 1908, after he quit the Land Office and before he became a Cabinet officer. Is there any rule in the Land Office, or do you know of any rule, which prevents ex officials from taking cases before that department which had come under their observation while they were in office?

Mr. GLAVIS. There is a Revised Statute that prevents them.

Mr. JAMES. I know. I am asking, Is there any regulation in the office?

Mr. GLAVIS. No.

Mr. JAMES. Or can you answer the question?

Mr. GLAVIS. There is a decision in the Land Office—I do not know which one it is—that prevents it, I think, because they held that the Revised Statutes—that is, the Secretary of the Interior held in that case that the Revised Statutes referred to only a money claim, although there is another decision in the Interior Department that takes the contrary view and holds that it does mean land claims as well as money claims.

Mr. JAMES. It says "any" claim, does it?

Mr. GLAVIS. The Revised Statutes says "any claim against the Government."

Mr. JAMES. It has been construed both ways, then?

Mr. GLAVIS. By the department it has.

The CHAIRMAN. I want to call the attention of the committee in this connection to page 260 of volume 17 of the Land Decisions, in which there is a decision by the Secretary of the Interior, Hoke Smith, made on August 23, 1893, the syllabus of which is as follows:

The phrase "claim against the United States," as employed in section 190 of the Revised Statutes, must be construed as meaning a money demand against the United States; and it therefore follows that the inhibition contained in said section does not extend to a former employee of the General Land Office who appears before the Land Department on behalf of an applicant for a tract of public land.

Mr. JAMES. Have you the decision there, Mr. Chairman, of L. Q. C. Lamar?

The CHAIRMAN. No, I have not; but I can get it for you.

Mr. JAMES. I would like to have that in the record.

The CHAIRMAN. The stenographer will please put these two cases in the record.

(The two cases referred to are as follows:)

ATTORNEY—SECTION 190, REVISED STATUTES.

W. D. HARLAN.

The phrase "claim against the United States," as employed in section 190 of the Revised Statutes, must be construed as meaning a money demand against the United States; and it therefore follows that the inhibition contained in said section does not extend to a former employé of the General Land Office, who appears before the Land Department on behalf of an applicant for a tract of public land.

[Secretary Smith to the Commissioner of the General Land Office, August 23, 1893.]

W. D. Harlan, attorney, appeared at your office for the purpose of representing Dorus M. Fox, who was seeking to amend his homestead entry, No. 1184, Des Moines, Iowa.

In your letter of June 30, 1893, you refuse to recognize him as attorney in said case, and he has appealed to this Department.

Your refusal was based upon the ground that W. D. Harlan was disqualified, under departmental construction of section 190 of the Revised Statutes in the case of Luther Harrison (4 L. D., 170).

Harlan was inspector of surveyors-general and United States land offices, from July, 1880, until June, 1893, during which time the case of Fox, in which he desired to appear as attorney, was pending before the land office.

The section (190 Revised Statutes) upon which your action was based provides that:

"It shall be unlawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employe in any of the Departments to act as counsel, attorney, or agent for prosecuting any claim against the United States, which was pending in either of said Departments, while he was such officer, clerk, or employe, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employe."

The proper solution of the question presented in the appeal of Harlan depends upon the meaning of the words "prosecuting any claim against the United States."

The litigation between citizens seeking to acquire title to public lands, under the homestead and other laws, is in no sense a claim *against* the United States,

nor is an ex-parte proceeding, such as that begun by Fox, for whom Harlan proposed to appear as attorney, a "claim *against* the United States." The citizen in his relation to the government, while availing himself of the benefit of the land laws, is simply exercising a right conferred upon him by the voluntary act of the government. In so far as the great mass of land cases are concerned, it is an indifferent matter to the government who prevails, except in that broad and comprehensive sense in which it is interested in the maintenance of law and order.

Mr. Fox is not "prosecuting a claim against the United States," he is simply endeavoring to avail himself of the benevolence of the government. This view appears to be conclusive of Harlan's right to appear as his counsel. If, therefore, the case of Fox is not a proceeding *against* the United States, Harlan is not disqualified to appear as his attorney, no matter what meaning may be given to the word claim as used in the statute.

It is important, however, to ascertain the meaning to be given to the word "claim" as used in the section under consideration.

The statute includes all Departments in which are pending claims against the United States. It is limited in its application by its own terms to claims. It does not affirm that all cases are claims; we are left therefore to employ the ordinary rules of interpretation to ascertain the legislative intent.

Section 3477 of the Revised Statutes contains the following:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

This statute was enacted in 1853, under the title of "An Act to prevent frauds upon the Treasury of the United States." The 2d section of that act contains a provision disqualifying any officer of the United States, or person holding any place of trust or profit, or discharging any official function under or in connection with any executive department of the Government of the United States, etc., from becoming an agent or attorney for prosecuting any claim against the United States. This statute, treating the word claim as something which can not be assigned until "after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof," contains its own legislative interpretation, clearly limiting its application to a money demand against the government.

Where the meaning of a word is clearly defined in one statute, it is regarded as a legislative interpretation, and will be given the same meaning when used in another statute upon the same subject. The statute of 1853 disqualifies certain officers of the government from prosecuting any claim against the United States. Section 190, Revised Statutes, disqualifies certain persons who have been employes from prosecuting any claim against the United States. The former furnishes a rule for the interpretation of the latter statute.

In the case of the United States *v.* Gillis (95 U. S., 407), the statute of 1853 has received a judicial interpretation.

Counsel for Gillis, having in mind section 236 of the Revised Statutes, which provides that "All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Department of the Treasury," contended that the act of 1853 is applicable only to claims asserted before the Treasury Department.

The court, however, did not so limit the application of the statute, but construed the act to include such claims as were presented to Congress, and such as were set up by defalcation in suits brought by the government. The court, in said case, said, also, that the act of 1853 "embraces every claim against the government, however arising, of whatever nature, and wherever and whenever presented."

Now, the court pointed out the claims which Congress had in view, all of them being money demands, and in perfect harmony with the caption and body of the act under consideration.

The plain and manifest meaning of the word claim against the United States, as used in the decision, is that the act embraces all claims, and that all claims are money demands.

Again, it is decided in the "Abbotsford" case, in the 98th United States, page 400, that when words used in a previous act have acquired by judicial interpretation a definite meaning, they will, when used in subsequent acts, be presumed to be used in the same sense.

Claim against the United States; therefore, as used in Section 190, Revised Statutes, must be construed as meaning a money demand against the United States.

In seeking the legislative intent, and keeping in mind the mischief sought to be remedied by the statute, it is not improper to inquire somewhat into the history of its enactment.

Section 190 of the Revised Statutes is included in the Post Office appropriation bill, approved June 1, 1872. It seems that the act grew out of a scandal emanating from the acts of a clerk, who, taking advantage of his position, familiarized himself with a large number of claims against the government, left its service, and sought and obtained employment of the claimants, prosecuted the claims, and received a large percentage of the recovery as compensation.

It will be borne in mind that the acts of the clerk, a repetition of which is sought to be prevented by the Statute, relate to money demands.

In 14th Peters, page 178, the court say:

"It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject matter to which it relates; and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to include in it."

In the case of Luther Harrison (4 L. D., 179), the reason given for extending the inhibition of section 190 to all cases in this Department is in the following language:

"Certain government employés are the trusted custodians of its books and papers, while others have free and unrestricted access to the same. It might be an easy thing for a faithless employé to use his time, not in the speedy and just settlement of claims against the government during the term of his office, but in preventing such settlement, and putting them in such a shape as to enable him to reap handsome profits by their unjust settlement after the term of his service has expired."

In view of the fact that in cases pending before your office or in this Department, in which persons are seeking to acquire title to the public lands, all parties in interest have access to the papers, that the evidence is prepared elsewhere and before they reach your office, that it is not in the power of a clerk to hinder or retard the consideration of a case, that all his work is reviewed by the Commissioner and the Secretary, it is not easy to conceive by what means an employé can put a case in such shape as to reap a handsome profit, after his term of service expires.

The case of Dorus M. Fox, not being a money demand against the government, W. D. Harlan was not disqualified to act as his attorney. Therefore your said decision is reversed.

ATTORNEYS BEFORE THE DEPARTMENT.

LUTHER HARRISON.

Section 190 of the Revised Statutes comprehends in its terms all the Departments and the prohibition therein extends to the prosecution of pending claims of every class, whether as counsel, clerk, or agent, during the two years designated.

[Secretary Lamar to Commissioner Sparks, October 6, 1885.]

I have received a letter from Luther Harrison, Esq., late Acting-Commissioner of the General Land Office, purporting to be an appeal from your action as Commissioner of the General Land Office, in refusing to recognize him as an attorney in certain matters pending before that office. The facts in this case are shown in the following correspondence:

"WASHINGTON, D. C., Sept. 22, 1885.

HON. WM. A. J. SPARKS,
Comm'r. General Land Office:

SIR: I was informed yesterday that you had instructed your chiefs of divisions that I was not permitted to appear in any case pending while I was in

the employ of the General Land Office, and that in such cases I should be denied access to the papers and not advised of the action of the office respecting them.

This action, I presume, was had under some supposed authority contained in the letter of the Hon. Secretary of the Interior to you, of 17th instant, directing, in response to your inquiry, an enforcement by you of section 190 of the Revised Statutes, prescribing the terms and conditions upon which certain persons, previously employed by the Government, may prosecute claims against it.

This action on your part is not justified either by the law or the Secretary's letter referred to, and I respectfully request that you reconsider it.

The rights, privileges and liberties of an American citizen, as guaranteed by the Constitution of our common country, are a priceless heritage left him by his forefathers, and should not be trampled upon to satisfy the whim and selfish greed of persons who have been agitating this matter, and who, but for the limitation of two years, during which time they enjoyed a lucrative practice, would now come within the provisions of the law. It is a serious thing to deprive a man of his only means of earning a livelihood for himself and family, and should not be done except for some crime committed, or unprofessional conduct, and this branch of the case appeals to you upon other grounds which I need only mention to be understood.

I claim also that section 190 of the Revised Statutes has no application to my case, because it provides that "It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employé in any of the Departments to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments, while he was such officer, clerk, or employé, nor in any manner, nor by any means, to aid in the prosecution of such claims, within two years next after he shall have ceased to be such officer, clerk or employé."

This law clearly contemplates that any person who was not in the employ of the Government on the first day of June, 1872, but was thereafter appointed to office, should not be permitted to prosecute any claim against the Government which was pending while he was in office, within two years next after he shall have severed his official relations with the Government.

This is apparent for the reason that the Constitution, under the head of "Limitations of the power of Congress," in express terms provides:

"No bill of attainder, or *ex post facto* law shall be passed." Art. 1, section ix, paragraph 3.

At the date fixed by the law, June 1, 1872, I was a third class clerk in the General Land Office, and from that time and before, to the 31st of August, 1885, I was continuously employed in that office. It is true, however, that I did not continue in that grade. The record shows, that January 31, 1880, I was commissioned by the President to be principal clerk on private land claims; September 20, 1882, was appointed by Secretary to be chief clerk, and July 9, 1884, was commissioned by the President to be Assistant Commissioner. My employment, however, has been continuous from the date of my original appointment, December 9, 1865, to the 31st of August 1885, when my resignation of the office of Assistant Commissioner took effect, and the record will also show that I have been paid for every day during that period. The various positions which I have filled since the 9th day of December, 1865, were a continuation of the original appointment which was then made, and which was the foundation of, and key to my entrance into the public service as a first class clerk, and they have always been considered promotions from that grade.

I hope you will give this subject that serious consideration which it merits at your hands, and advise me promptly of your decision.

Respectfully,

L. HARRISON.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sept. 23, 1885.

HON. L. HARRISON:

DEAR SIR: Yours of the 22d instant before me. In reply I beg to say, that I transmitted to the chiefs of the various divisions of the General Land Office a copy of the "Secretary's Instructions" in relation to persons who had been officials of the office practicing as attorneys therein, with directions that they should cause the same to be strictly complied with.

In this I certainly have neither deprived, nor attempted to deprive you of any of your constitutional and legal rights, nor have I thereby indicated any unkindly treatment toward you personally, but simply, as I conceive it, have

discharged my official duty under the law, to the head of the Department under which I serve.

It is not unknown to you that it has been, and is, my earnest desire and determination, so far as in me lies, to do away with the loose practices that have heretofore existed in the General Land Office.

In this I shall continue, prompted by the sole desire to discharge a duty, and certainly regretting if in doing this, any body shall feel that they have cause of grievance, or that it is aimed at them in any spirit of unkindness or malevolence.

Very truly,

WM. A. J. SPARKS,
Commissioner.

In a communication addressed to me, as Secretary of the Interior, dated September 30th, and entitled as stated at the beginning of this paper, Mr. Harrison says:

"It will be observed that the Commissioner does not directly decide whether my case as presented to him, falls within the provisions of the law, yet in view of what I had stated as his action in the matter, he, by inference, decides that it does, and there can be no doubt about this, for in his letter he says, without qualification, that the directions given were with reference to persons practicing who had been previously officials of the office and that he had simply as he conceived it, discharged his official duty under the law, to the head of the Department, thus denying a reconsideration of his action. . . .

I now respectfully appeal to you, and as grounds therefor state:

(1) That Section 190 R. S. should be held to apply only to the prosecution of claims for money.

(2) That it has no application in the practice before the General Land Office except in cases involving the payment of money.

(3) That in my case the law has no application whatever."

In the course of his argument Mr. Harrison contends that he should be excepted from the operations of the statute for the following reasons:

"I was then, and for some years previous, employed in the General Land Office. From date of my original appointment to the 1st instant, I was not for a day, an hour, or an instant, out of such employment. It is true that my salary was increased by promotion to higher grades, and that I performed different duties at different times. It is also true that these promotions were made by new appointments. I contend, however, that it was the clear intent of the statute to except from its operations any person who on June 1st, 1872, was an officer, clerk or employe in any department, and who continuously thereafter remained in such Department up to his severance of official relations, following which, he might seek to practice as an attorney."

OPINION.

The question presented is, whether a person who holds his appointment as an officer, clerk, or employe in the Department of the Interior may act as counsel, attorney, or agent for prosecuting any claim against the United States in that Department while he was such officer, clerk, or employe, or can in any manner, or by any means, aid in the prosecution there of such claim, until two years have expired since the dissolution of his official connection with that Department.

The act of Congress of 1872, section 100 of the U. S. Revised Statutes, reads as follows:

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employe in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employe, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employe."

The prohibition of this statute is unconditional, and comprehends in its terms all of the Departments of the Government, every case of the prosecution of a claim pending against the United States in any one of them, and debars every officer, clerk, or employe from participating in any manner, with any means, whether as counsel, clerk, or agent, in the prosecution of that claim within the time designated.

I shall consider this case as an appeal from the decision of the Commissioner of the General Land Office in cases of contests relative to titles to the public

lands between claimants, and which were pending while the appellant was a clerk in that office, and within two years since his resignation.

The objection is that this statute has no reference to contests of title to lands, but only to claims for money upon the United States, and that the language of the statute and the policy of the act are each satisfied by this interpretation.

I do not concur in this conclusion. The statute applies to all of the Departments; to all of the offices of the designated classes in each one; and to all prosecutions of claims of every class in the Departments pending there while the officers, clerks, or employés appointed since June, 1872, belonged to them. The act is not penal in its nature. It authorizes no criminal prosecution, nor does it impute discredit or dishonor, nor affix stigma on any. It creates a civil disability for the public utility. Its design is to elevate the public service, so that it may inspire public confidence. The act plainly implies that it is not suitable or seemly for an officer, clerk, or employé, shortly after his departure from service in a Department, to appear before that Department as a prosecutor of the claims pending therein against the United States while he was a member of it.

The principle of the act is, that all the public servants in the Department, whether officers, clerks, or employés, shall observe a condition which at least tends to hinder them from appearance of being placed under a suspicion of having had a conflict between their duties as officers or public agents and as men, and as giving preference to the last. For two years after their resignation or dismissal they are disabled for the prosecution of claims in the Department against the United States. The terms of the act are unqualified, and are very expressive by their universality and absoluteness. My opinion is, they embrace all persons commissioned or appointed in the Department since the first day of June, 1872, as officer, clerk, or employé, and who have not been out of service for two years. Neither do I concur in the argument that cases prosecuted in the Land Office relative to claims for title to the public lands are not included within the terms of the act.

The power to dispose of the public domain, and to make rules respecting it under the acts of Congress, is confided to this Department. The *claims* upon the United States respecting the disposition of their public lands arise out of treaties with foreign nations and Indian tribes; compacts between the United States and States of the Union; and laws of the United States for disposition by sale, donation, or as bounties, under laws for settlement, and grants of preemption and other forms of contract. It would be difficult to state the value of the rights and interests involved and the variety of questions and controversies that arise. An officer, clerk, or employé of the Department may abuse his opportunities in the Department for the acquirement of information, or the making of connections to assist him to appear favorably and profitably thereafter, as counsel, attorney, or agent in the litigious discord which may exist, or as preparing in the Department cases of claims. Such officer, clerk, or employé during his term may apply himself for practice after his resignation. He may be tempted to foment controversies in respect to titles which have come before the Department in his presence, and perhaps in cases within his cognizance and within his care as an officer, clerk, or employé.

The titles issued by the Government may be discredited, and the purchasers of the public domain embarrassed, because of such infidelity. The irregularities, defects, or omissions he may have noted he may conceal and withhold for further speculation or merchandise.

It is easy to conceive of cases of claims and counter-claims pending between the government and its citizens, where the loss, destruction or mutilation of a single book or paper, or the alteration of a single word therein, might result in a heavy loss to the government and a great injustice to a large number of citizens. In view of the fact that certain government employés are the trusted custodians of its books and papers, while others have free and unrestricted access to the same, it might be an easy thing for a faithless employé to use his time—not in the speedy and *just* settlement of claims against the government during the term of his office—but, in *preventing* such settlement, and putting them in such a shape as to enable him to reap handsome profits by their *unjust* settlement, after the term of his service shall have expired.

The statute is so comprehensive and absolute in imposing disqualification, that we may fairly conclude the decision was, that the axe was to be placed at the root of the tree bearing the fruit. The statute imports that no citizen should be put to loss or suffering because of the infidelity of any of the officers

of the Department appearing as counsel, attorney, or agent, adversely to the United States, by any manner or means in their possession.

The statute includes all persons "appointed after the first day of June, 1872, as an officer, clerk, or employé," etc. That was the date of the passage of the act; and the Congress in directing that the statute should apply alone to appointments made after its enactment, evidently intended in a spirit of fairness to impose the disability, which sound public policy required, only with the assent of the appointee—to be implied from acceptance of the office. It gave notice that all persons thereafter appointed as officer, clerk, or employé in any of the Departments must accept their appointments and commissions subject to the conditions prescribed. This purpose is just as applicable to one who has accepted a distinct appointment to a new and better position since the date fixed, as to one newly introduced to the service. Those officers of the Department who have been appointed to another grade and commissioned are included in the prohibitions of the act. They clearly apply to one who, like Mr. Harrison, has accepted and held an office by appointment of the President, by and with the advice and consent of the Senate, when at the time specified by the statute he was employed merely in a clerical capacity.

Your action is approved.

Very respectfully,

L. Q. C. LAMAR,

Secretary.

Mr. GRAHAM. Do you know whether there are any other decisions on this point, preventing any ex-officials of the Land Department from taking and prosecuting claims before that department?

Mr. BRANDEIS. I do not. I should have supposed, from an examination of the statute, that there would be no question as to that; that the opinion given by Secretary Lamar was the correct opinion.

The CHAIRMAN. In connection with these decisions, I would like to have added what the Attorney-General says on page 802, where he refers to this matter, commencing at the middle of the page—"Second. The suggestion that it was unlawful for Mr. Ballinger"—down to the bottom of the page. I want that inserted. It is as follows:

Second. The suggestion that it was unlawful for Mr. Ballinger to have any professional relation with these claimants because of his previous incumbency of the office of Commissioner of the Land Office is, in my opinion, unsound. The suggestion is based on section 190, United States Revised Statutes, which enacts:

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

In the case of W. D. Harlan (17 Land Dec., 216) Secretary of the Interior Smith, in a well-reasoned opinion, held that the words "claim against the United States," as used in that section, must be construed to mean a money demand against the United States. An earlier decision (4 Land Dec., 179), which gave a wider application to the words, was overruled. In *Yenter v. Prince* (33 Land Dec., 137) this construction was adopted and followed by Acting Secretary Rynn. A similar construction has been given in section 10 of the act of March 3, 1863, now constituting section 3469, Revised Statutes, relating to the assignment "of any claims in favor of the United States," by Attorney-General Edwards (12 Op., 543); and section 5498, Revised Statutes, relating to the prosecution of any claim against the United States by an officer of the United States, etc., appears only to have been applied to the prosecution of money claims.

Mr. DENBY. Do you think, Mr. Glavis, if you do not mind stating just what your views are, that Mr. Ballinger and Mr. Dennett were in league to aid in the fraudulent securing of coal lands, or do you

think they were simply incompetent, or what are your views of their competency in general?

Mr. GLAVIS. That would be the sum of my whole testimony; it would only be my opinion.

Mr. DENBY. I thought that you had given a great deal of study to it, and you would have an opinion on it.

Mr. GLAVIS. I had some evidence which would lead me to believe that Mr. Dennett needed the support of all the official people he could get to become the Commissioner of the General Land Office; that is, to be reappointed. On that account I thought, perhaps, he might go further than he would ordinarily. As to Mr. Ballinger, however, I do not know; it is pretty hard to judge what he was going to get out of it, or whether he was going to get anything out of it—I do not know.

Mr. DENBY. I notice in these letters at various places he speaks of not considering himself the proper person to handle these claims, because he had once had private relations while a lawyer with the defendants. Do you accept that as the genuine expression of his views, that he ought not to take part, because of prejudice?

Mr. GLAVIS. No doubt those are his views; but he did take part in them after becoming Secretary.

Mr. DENBY. It was after he became Secretary that he wrote these letters and tried to have Pierce handle the cases?

Mr. GLAVIS. After becoming Secretary he did take part in the conduct of the Alaska investigations.

Mr. DENBY. Then you do not place much reliance on his statement that he did not; that he preferred not to; that he tried not to?

Mr. GLAVIS. No; I do not.

Mr. BRANDEIS. I suppose, Mr. Chairman, that it would be proper to say that we, in presenting this fact, have not assumed that it was the legality of Mr. Ballinger's act, but the propriety of the act—his acting for the Government and getting all the Government's side of the case, as one does in that office, and then afterwards acting for the claimants. It seems to us that even in ordinary practice no man who had acted on one side of a case would afterwards act for the other side.

The CHAIRMAN. Have you any further evidence?

Mr. BRANDEIS. Yes, sir. Mr. Glavis, you stated what happened after this time, July 30, when you wrote that letter that has been the subject of discussion. Now, go on from there.

Mr. GLAVIS. About four or five days later I was in Spokane, Wash., and there met Mr. Pinchot, and I related to him—

Mr. BRANDEIS. That was the first time that you had met Mr. Pinchot in this connection?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. What time was that?

Mr. GLAVIS. About August 5 was the first time I ever met or ever talked to him or ever wrote to him—I had not written him at all about these coal cases. I explained briefly the situation, and he asked me if I would mind if ex-Governor Pardee, of California, would hear the circumstances, and I told him I had no objection to his hearing them. So Mr. Pardee came in the room and I explained to both of them the situation, and showed them the documents and

the papers, and after going thoroughly over the matter Mr. Pinchot thought the facts were of such a serious nature that I should present them to the President; and as it was my opinion also that something ought to be done, he gave me a couple of letters of introduction, and I left that night or the next night for the East. Before leaving I told Mr. Pinchot that I thought perhaps Mr. Shaw, of the Forest Service, might have some information also that I could use in my report to the President, and as a result of that statement Mr. Pinchot said he would have Shaw meet me in Chicago. I prepared a rough draft of my report to the President on the train to Chicago, and when I arrived there I met Mr. Shaw, and he explained to me the difficulty he had encountered in getting some of the record. First, he said that they had refused to show him any of the Cunningham papers at first.

Mr. DENBY. That who refused to show him the record?

Mr. GLAVIS. I think it was Mr. Schwartz; I do not know whether Mr. Pierce, the Assistant Secretary, was there or not.

Mr. DENBY. You mean he was refused here at the bureau in Washington?

Mr. GLAVIS. Yes, sir; at the General Land Office. I did not see any evidence that he had, but in writing my report I stated that the Forest Service might have some further information, thinking perhaps the President might call on the Forest Service for a fuller report, and I did not want to give hearsay evidence in my report, because I wanted to confine myself to a statement of the facts.

The next day Mr. Shaw went with me when my report was written, and he made some suggestions as to the substance and form of the report, but as to any change in the substance of my report I would not accept; but as to the form, I did accept a number of suggestions, and he read my rough draft of the report to the stenographer, and when it was written up I proceeded to Beverly and met the President there and presented him with a summary of my report, and also with the main report.

He asked me then about some water-power sites. There had been some newspaper talk about water-power sites at that time—I did not know very much about it, so after leaving him I wired Shaw in Washington, asking him to come to Boston and bring the power site places, and he did bring them up. I asked him to do this because I thought perhaps I would see the President again and if he wanted to know about it I could give him the papers and tell him that Mr. Shaw was there and that he could tell him about it. He seemed very much interested in the power sites. I remained in Boston about four or five days, and then Mr. Carpenter, the President's private secretary, advised me over the telephone that the President had furnished Mr. Ballinger with my report, and that I could return to Seattle, and that they might want me later in Washington.

On my way to Seattle I arrived in New York on the morning and left that night, but during that time I tried to see Mr. Wickersham. I saw his private secretary and told him that I thought that if somebody was allowed to come to Washington they could get a great deal of further evidence down here in the way of record evidence. He told me afterwards that Mr. Wickersham said he could not authorize me to come here; that I was out of his department and would have to assume the responsibility myself. I did not want to do that. I

went back to Seattle, and a couple of weeks later, I guess it was, I was dismissed from the service. That was all of my relations with the Alaska coal cases officially.

Mr. BRANDEIS. What was the date when you saw the President?

Mr. GLAVIS. I do not remember now.

Mr. BRANDEIS. There is one letter of August 12 from Mr. Schwartz to Mr. McEniry, which appears on page 424, and which reads as follows:

WASHINGTON, D. C., August 12, 1909.

M. D. McENIRY,
Special Agent, Denver, Colo.:

Get into scare heads to-night and Associated Press, if possible, that Secretary and commissioner have secured evidence showing unlawful combinations of several hundred coal entries; that General Land Office is assigning its best coal engineers and lawyers to Seattle to assist in the coming trials; that Commissioner General Land Office while in Denver had expressed confidence that several hundred entries would be canceled; that Government is making every effort to secure speedy action on these cases, as all coal entries in Alaska have now been suspended for over four years; that Government is anxious to clear these lands of bad entries that it may get coal for its coaling stations in the Pacific; that special agents say that coming hearings will reach some of largest interests yet uncovered; and that Ballinger has made it plain that he will stand behind them to the finish; that several of the railroad corporations owned by eastern capital are making indirect efforts to delay the hearings, hoping that next Congress will pass further remedial legislation or permit greater consolidation, but it is the position of the commissioner that such entries as are fraudulent, as the law now stands, should be canceled at once, and criminal liability developed before statute bars action. Follow somewhat above ideas. I understand slanderous newspaper attacks about to be made on Commissioner of the General Land Office, Secretary of the Interior, and Assistant Secretary of the Interior Pierce, in Alaska coal. I wish to forestall. Treat the source of your information secret, as I have consulted no one. After putting this out, until advised further, avoid interviews in this matter.

SCHWARTZ.

Mr. OLMSTED. Can you tell us—I suppose we could ascertain by looking it over—who put that in?

Mr. BRANDEIS. That is a part of the full record of the coal cases, as I understand it.

Mr. OLMSTED. I know; but who produced that original paper?

The CHAIRMAN. It is the answer of Schwartz.

Mr. BRANDEIS. It is a part of Schwartz's answer, a part of all the papers on file. Mr. Glavis, how old are you?

Mr. GRAHAM. Before taking that up, who is McEniry?

Mr. BRANDEIS. Do you know who McEniry is?

Mr. GLAVIS. He is chief of the field division at Denver.

Senator FLETCHER. What page is that on?

Mr. BRANDEIS. That is on page 424.

How old are you, Mr. Glavis?

Mr. GLAVIS. Twenty-six.

Mr. BRANDEIS. Mr. Chairman, this is all that I have to ask this witness at the present time. When the papers that we have asked for have been produced there may be some questions in that connection that I may desire to recall the witness for.

The CHAIRMAN. I am not advised at this time whether any of these gentlemen against whom these insinuations and charges are made desire to cross-examine Mr. Glavis, but if that should be the case, I suppose he will be in attendance.

Mr. BRANDEIS. Whenever the committee desires him. Mr. Glavis can tell what his intentions are. I do not know what they are.

The CHAIRMAN. You expect to recall him after you have those other documents?

Mr. BRANDEIS. He may or may not be recalled. It depends upon what the evidence is.

Mr. COTTON. Mr. Glavis states that he does not desire to remain around here. If there is to be any plan—

The CHAIRMAN. I do not know of any plan at present.

Mr. COTTON. I think we would rather leave it that way—that we will recall him or not, as we see fit.

The CHAIRMAN. I would suggest that Mr. Glavis be in attendance at our next meeting on Monday afternoon.

Mr. GLAVIS. I want to get out West as soon as I can.

The CHAIRMAN. Is the attorney for Mr. Pinchot present?

Mr. COTTON. I think he is not here, but I will send him any word you may want me to.

The CHAIRMAN. Tell him that we will adjourn this hearing until 2.30 o'clock Monday afternoon.

If it is agreeable to the committee, the hearing will be adjourned till Monday at half-past 2 o'clock.

(Accordingly at 5.05 p. m. the committee adjourned until Monday, January 31, 1910, at 2.30 o'clock p. m.)

COAL-LAND LAW AND REGULATIONS THEREUNDER.

N.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 31, 1882.

GENTLEMEN: The following sections of the Revised Statutes provide for the sale of coal lands of the United States:

TITLE XXXII, CHAPTER SIX.

MINERAL LANDS AND MINING RESOURCES.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Entry of coal-lands,
3 March, 1873, c. 279.
s. 1, v. 17, p. 807.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Preemption of coal-lands. *Ibid.*, s. 2.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

RULES AND REGULATIONS.

Under the authority conferred by said section 2351 the following rules and regulations are issued for carrying into effect the provisions of said law:

1. Sale of coal lands is provided for—
By ordinary *private entry* under section 2347.
By granting a *preference right* of purchase, based on priority of possession and improvement, under section 2348.
2. The land entered under either section must be *by legal subdivisions*, as made by the regular United States survey. Entry is confined to surveyed lands; to such as are vacant, not otherwise appropriated, reserved by competent authority, or containing valuable minerals other than coal.
3. Individuals and associations may purchase. If an individual, he must be twenty-one years of age and a citizen of the United States, or have declared his intention to become such citizen.
4. If an association of persons, each person must be qualified as above.
5. A person is not disqualified by the ownership of any quantity of other land, nor by having removed from his own land in the same State or Territory.
6. Any individual may enter by legal subdivisions as aforesaid any area not exceeding one hundred and sixty acres.
7. Any association may enter not to exceed three hundred and twenty acres.
8. Any association of not less than four persons, duly qualified, who shall have expended not less than \$5,000 in working and improving any coal mine or mines, may enter under section 2348 not exceeding six hundred and forty acres, including such mining improvements.
9. One person can have the benefit of one entry or filing *only*. He is disqualified by having made such entry or filing alone or as a member of an association. No entry can be allowed an association which has in it a single person thus disqualified, as the

law prohibits the entry or holding of more than one claim either by an individual or an association.

10. Lands that are sufficiently valuable for gold, silver, or copper to prevent their entry as agricultural lands can not be entered as coal-lands; and you will not allow any entry to be made under the above-named provisions of law of lands valuable for their deposits of said minerals.

11. The present rules relative to "hearings to establish the character of lands," contained in General Land Office regulations of October 31, 1881 [Revision approved June 24, 1899], issued under the mining laws, will, as far as applicable, govern your action in determining the character of lands sought to be entered as coal-land.

12. The price per acre is \$10 where the land is situated *more* than fifteen miles from any completed railroad, and \$20 per acre where the land is *within* fifteen miles of such road. The price of the land, however, must be determined by its distance from a completed railroad at the date of payment and entry irrespective of the preference-right of entry.

13. When application is made to purchase coal-land at the rate of \$10 per acre you will in all cases require satisfactory proof that the land applied for is, at date of entry, situated more than fifteen miles from any completed railroad. This proof may consist of the affidavit of the applicant, or that of his duly authorized agent, corroborated by the affidavit of some disinterested credible party showing personal knowledge of the facts.

14. Where the land lies *partly within* fifteen miles of such road and in *part outside* such limit, the *maximum* price must be paid for all legal subdivisions the greater part of which lie within fifteen miles of such road.

15. The term "completed railroad" is held to mean one which is actually constructed on the face of the earth; and lands within fifteen miles of any point of a railroad so constructed will be held and disposed of at \$20 per acre.

16. Any duly qualified person or association must be preferred as purchasers of those public lands on which they have opened and improved, or shall open and improve, any coal mine or mines, and which they shall have in actual possession.

17. Possession by agent is recognized as the possession of the principal. The clearest proof on the point of agency must, however, be required in every case, and a clearly-defined possession must be established.

18. The *opening and improving* of a coal mine, in order to confer a preference-right of purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

19. These lands are intended to be sold, where there are adverse claimants therefor, to the party who, by substantial improvements, actual possession, and a reasonable industry, shows an intention to continue his development of the mines in preference to those who would purchase for speculative purposes only. With this view, you will require such proof of compliance with the law, when lands are applied for under section 2348 by adverse claimants as the circumstances of each case may justify.

20. In conflicts where improvements have been or shall hereafter be commenced, priority of possession and improvement shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant when a subsequent claimant shows his full compliance with the law.

21. After an entry has been allowed to one party, you will make no investigation concerning it at the instance of any person except on instructions from this office. You will, however, receive all affidavits concerning such case and forward the same to this office, accompanied by a statement of the facts as shown by your records.

22. Prior to entry it is competent for you to order an investigation, on sufficient grounds set forth under oath of a party in interest and substantiated by the affidavits of disinterested and credible witnesses.

MANNER OF OBTAINING TITLE.

23. When title is sought by *private entry* the party will himself make oath to the following application, which must be presented to the register:

"I, _____, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, to purchase the _____ quarter of section _____, in township _____, of range _____, in the district of lands subject to sale at the land office at _____, and containing _____ acres; and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held nor pur-

chased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains large deposits of coal and is chiefly valuable therefor; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

"— — — —"

24. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant or his duly authorized agent must then pay the amount of purchase money.

25. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, from whence, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land office.

26. This disposition at private entry will be subject to any valid prior adverse right which may have attached to the same land and which is protected by section 2348.

27. *Second.* When the application to purchase is based on a priority of possession, &c., as provided for in section 2348, the claimant must, when the township plat is on file in your office, file his declaratory statement for the tract claimed sixty days from and after the first day of his actual possession and improvement. Sixty days, exclusive of the first day of possession, &c., must be allowed.

28. The declaratory statement must be substantially as follows, to wit:

"I, ———, do solemnly swear that I am ——— years of age, and a citizen of the United States (or have declared my intention to become a citizen of the United States), that I never have, either as an individual or as a member of an association, held or purchased any coal-lands under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, and I do hereby declare my intention to purchase, under the provisions aforesaid, the ——— quarter of section ———, in township ———, of range ———, of lands subject to sale at the district land office at ———, and that I came into possession of said tract on the ——— day of ———, A. D. 18—, and have ever since remained in actual possession continuously; that I have located and opened a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: [here describe the nature and character of the improvements]; and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

"— — — —"

29. When the township plat is not on file at date of claimant's first possession the declaratory statement must be filed within sixty days from the filing of such plat in your office.

30. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but you will allow no party to make final proof and payment except on notice to all others who appear on your records as claimants to the same tract.

31. A party who otherwise complies with the law may enter *after* the expiration of said year, *provided* no valid adverse right shall have intervened. He postpones his entry beyond said year at his own risk, and the Government can not thereafter protect him against another who complies with the law, and the value of his improvements can have no weight in his favor.

32. Each claimant at the time of actual purchase must make affidavit as follows:

"I, ———, claiming under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, the right of purchase to the ——— quarter of section ———, in township ——— of range ———, subject to sale at ———, do solemnly swear that I have never had the right of purchase under the aforesaid provisions of law either as an individual or as a member of an association, and that I have never held any other lands under its provisions; I further

swear that I have expended in developing coal mines on said tract, in labor and improvements, the sum of _____ dollars, the nature of such improvements being as follows: _____; that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that the same is chiefly valuable for coal; that there is not, to my knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

"_____."

33. The application, declaratory statement, and the affidavit required at the time of actual purchase, the forms of which are given above under paragraphs 23, 28, and 32, may be sworn to before any officer authorized by law to administer oaths, but the authority of such officer must be properly shown.

34. Any party duly qualified under the law, after swearing to his application or declaratory statement, may, by a sufficient power of attorney duly executed under the laws of the State or Territory in which such party may then be residing, empower an agent to file with the register of the proper land office the application, declaratory statement, or affidavit required at the time of actual purchase, and also authorize him to make payment for and entry of the land in the name of such qualified party; and when such power of attorney shall have been filed in your office you will permit such agent to act thereunder as above indicated.

35. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, his duly authorized agent who possesses such knowledge may make the required affidavit as to its character; but whether this affidavit is made by principal or agent it must be corroborated by the affidavits of two disinterested and credible witnesses having knowledge of its character.

36. Nothing in these regulations shall be so construed as to prevent a party from proving his citizenship or age, or establishing the status of the lands sought to be entered, in accordance with ordinary rules of evidence; and any proof regularly introduced for that purpose that would be competent in a court or before a commissioner charged with the ascertainment of facts may be considered.

37. Assignments of the right to purchase will be recognized when properly executed. Proof and payment must be made, however, within the prescribed period, which dates from the first day of the possession of the assignor who initiated the claim.

38. The "Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior," approved December 20, 1880 [Revision approved January 27, 1899], will, as far as applicable, govern all cases and proceedings arising under the sections of the Revised Statutes above quoted providing for the sale of coal lands of the United States.

39. You will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with No. 1 and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal lands you will continue the same without change.

N. C. McFARLAND, *Commissioner*.

TO REGISTERS AND RECEIVERS.

DEPARTMENT OF THE INTERIOR, July 31, 1882.

Approved.

H. M. TELLER, *Secretary*.

COAL CLAIMANTS' APPLICATIONS.

[From circular instructions issued August 7, 1895, relative to deposits by individuals for the survey of public lands under section 2401, Revised Statutes, as amended by the act of August 20, 1894.—2d L. D., 77.]

In addition to the rights of settlers, referred to in the foregoing portions of this circular, sections 2401, 2402, and 2403, United States Revised Statutes, as amended by the act of August 20, 1894, embrace provisions in favor of "persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof."

The coal-land laws contained in sections 2347 to 2352, United States Revised Statutes, provide methods by which persons properly qualified may become lawfully

possessed of coal lands even before the survey of the lands, and be entitled to enter the same after survey. For particular information in regard thereto, reference is made to departmental circular of July 31, 1882, entitled "Coal-Land Laws and Regulations Thereunder." Such parties, in cases where the tracts of which they are lawfully possessed are still unsurveyed, may, under said sections 2401, 2402, and 2403, as amended by act of August 20, 1894, apply to the surveyor-general for the surveying district in which the lands are included for a survey of the township or townships including the land according to the provisions of said sections. Such an application must be accompanied by the affidavit of the applicant or applicants substantially as prescribed for declaratory statements on page 7 of the said circular of July 31, 1882, corroborated by the testimony of two or more witnesses, in which the qualifications of the applicants, the character and location of the land, indicating the township or townships in which it is included as nearly as practicable, and other essential facts must be so set forth as to satisfy the surveyor-general that the case comes properly within the provisions of the law as above given. He will, thereupon, if he approves the application, transmit the same to this office, with the required proofs and his report.

CIRCULAR.

Instructions concerning the acquisition of title to coal lands in Alaska, under the act of Congress approved June 6, 1900 (Public—No. 168), entitled "An act to extend the coal-land laws to the district of Alaska."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 27, 1900.

REGISTERS AND RECEIVERS,
District of Alaska.

GENTLEMEN: Your attention is directed to the following act of Congress approved June 6, 1900, extending the coal-land laws to the district of Alaska:

"AN ACT To extend the coal-land laws to the district of Alaska.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public-land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

Under the coal-land law, sections 2347 to 2352, inclusive, of the Revised Statutes, and the regulations thereunder issued July 31, 1882, coal-land filings and entries must be by legal subdivisions as made by the regular United States survey.

Section 2401 of the Revised Statutes, as amended by act of August 20, 1894, is as follows:

*"Sec. 2401 (as amended by the act of August 20, 1894). When the settlers in any township not mineral or reserved by the Government, or persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof, or when the owners or grantees of public lands of the United States, under any law thereof, desire a survey made of the same under the authority of the surveyor-general and shall file an application therefor in writing and shall deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey, together with all expenditures incident thereto, without cost or claim for indemnity on the United States, it shall be lawful for the surveyor-general, under such instructions as may be given him by the Commissioner of the General Land Office, and in accordance with law, to survey such township or such public lands owned by said grantees of the Government, and make return therefor to the general and proper local land office: *Provided*, That no application shall be granted unless the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for township and subdivisional surveys."*

Under said section 2401 as amended persons and associations lawfully possessed of coal claims upon unsurveyed lands may have such claims surveyed, provided the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for township and subdivisional surveys.

Although the system of public-land surveys was extended to the district of Alaska by a provision contained in the act of Congress approved March 3, 1899 (30 Stat., 1098), no township or subdivisional surveys have been made, nor have any standard lines or bases for township and subdivisional surveys been established within the district; therefore until the filing in your office of the official plat of survey of the township, no coal filing nor entry can be made.

BINGER HERMANN, *Commissioner*.

DEPARTMENT OF THE INTERIOR, June 27, 1900.

Approved.

E. A. HITCHCOCK, *Secretary*.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 5, 1904.

REGISTERS AND RECEIVERS,
United States Land Offices.

Sirs: Paragraphs 30 and 31 of the Coal-Land Regulations (circular of July 31, 1882) were, on December 31, 1903, amended by the Secretary of the Interior to read as follows:

"30. One year from and after the expiration of the period allowed for filing a coal declaratory statement is given within which to make proof and payment; but you will allow no party to make final proof and payment except on notice to all others who appear on your records as claimants to the same tract. No notice will hereafter be given to parties whose coal filings have expired by limitation under the law.

"31. A declarant who otherwise complies with the law may enter *after* the expiration of said year, *provided* no valid adverse right shall have intervened, but postpones his entry beyond said year at his own risk. Thereafter the land is subject to entry by any duly qualified applicant, without notice to the claimant under the expired declaratory statement; and the Government can not thereafter protect the latter against another who complies with the law or give the value of his improvements any weight in his favor."

Very respectfully,

W. A. RICHARDS, *Commissioner*.

B.

REGULATIONS CONCERNING THE LOCATION AND PATENTING OF COAL LANDS IN THE DISTRICT OF ALASKA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 17, 1904.

The following instructions, issued under the act of Congress approved April 28, 1904 (33 Stats., 525), entitled "An act to amend an act entitled 'An act to extend the coal-land laws to the district of Alaska,' approved June 6, 1900" (31 Stats., 330), are for the guidance of the local officers in their administration of the law and for the information of those concerned in its provisions.

Section 1 of said act provides, among other things—

"That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced."

Persons or associations of persons locating coal lands in the district of Alaska under this provision of the act are required to possess the qualifications of persons or associations making entry under the general coal-land laws of the United States, and the requirements in this particular are to be found in the coal-land circular approved July 31, 1882.

The requirement of the statute with respect to the form of the tract sought to be entered is construed to mean that the boundary lines of each entry must be run in cardinal directions—i. e., due north and south and east and west lines, by reference to

a true meridian (not magnetic) with the exception of meander lines on meanderable streams and navigable waters forming a part of the boundary lines of a location. Those meander lines which form part of the boundary of a claim will be run according to the directions in the Manual of Surveying Instructions, but *other* boundary lines will be run in true east and west and north and south directions, thus forming rectangles, except at intersections with meandered lines.

The permanent monuments to be placed at each of the four corners of the tract located may consist of—

First. A stone at least 24 inches long, set 12 inches in the ground, with a conical mound of stone $1\frac{1}{2}$ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third. A rock in place; and, whenever possible, the identity of all corners should be perpetuated by taking courses and distance to bearing trees, rocks or other objects, permanent objects being selected for bearings whenever possible.

It is further provided by the first section of the act that within one year from the date of the passage of the act, or within one year from making the location, the locators shall file for record in the recording district and with the register and receiver of the land district in which the land is located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same. In other words, the notice should contain a complete description in every particular of the claim as it is marked and monumented upon the ground.

By the second section of the act the locator or his assigns is allowed three years from the date of filing the notice prescribed in the first section of the act within which to file an application with the local land officers for a patent for the land claimed. It will thus be seen that persons or associations of persons claiming coal lands in that district at the date of the passage of the act have four years from location within which to present their applications to purchase the same, and persons or associations of persons locating thereafter have the same period of time within which they may apply for patent; and patents may be issued to the locators or their assigns who are citizens of the United States.

Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, will be considered as having forfeited their rights, providing a valid adverse right has intervened, and parties who file after the time prescribed do so at their own risk.

With the application for patent the claimant must file a certified copy of the plat of survey and field notes thereof made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the surveyor-general for the district of Alaska. Under this clause of the act it will be allowable for the claimant, at his own expense, to procure the making of a survey by one of the officials mentioned without first making application to the surveyor-general, but the survey when made is to be submitted to and approved by the surveyor-general, and by him numbered serially.

The survey must be made in strict conformity with or be embraced within the lines of the location as appears from the record thereof in the recording district, and must be made in accordance with the rules laid down in the circular relative to mining claims, approved December 18, 1903, and covered by paragraphs 115 to 169 thereof, so far as the same may be applicable.

Upon the presentation of an application for patent, as provided by section 2, if no reason appears for rejecting the application, the same will be received by the register and receiver and the claimant required to publish a notice of such application for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and the register will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, 9 consecutive insertions are necessary. When in a daily newspaper, the notice must appear in each issue for 61 consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

The notice so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data, the published notices must further indicate the locus of the claim by giving the connecting line as shown by the field notes and plat between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

At the same time the claimant will be required to cause a copy of such notice, together with the certified copy of the official plat of survey, to be posted upon the land applied for in a conspicuous place.

The publication in the newspaper and the posting upon the land and in the local land office must cover the same period of time.

Upon the expiration of the sixty days' period prescribed the claimant may file in the local land office a sworn statement from the office of publication, to which shall be attached a copy of the notice published, to the effect that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' period of publication, giving the dates. The register will also file with the record a certificate showing that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

Thereupon, not earlier than six months after the expiration of the period of publication, if no objections are interposed or adverse claim filed, entry may be allowed upon payment of the price per acre specified by the act.

The proviso to the second section of the act is as follows:

"That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district."

The term "shore" is defined to mean the land lying between high and low water marks of any navigable waters within said district.

Section 3 provides for the assertion, by any person or association of persons, of an adverse claim, and requires that such adverse claim shall be filed during the period of posting and publication, or within six months thereafter; that it shall be under oath and set forth the nature and extent thereof.

An adverse claim may be verified by the oath of the adverse claimant or by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and, when verified by such agent or attorney in fact, he must distinctly swear that he is such agent or attorney in fact and accompany his affidavit by proof thereof. The adverse claimant should set forth fully the nature and extent of the interference or conflict by filing with his adverse claim a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance or duly certified copy thereof or an abstract of title from the office of the proper recorder should be furnished, or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof and amount paid, which facts will be supported by the affidavits of one or more witnesses, if any were present at the time; and if he claims as a locator he must file a duly certified copy of the location notice from the office of the proper recorder and his affidavit of continued ownership.

Upon the filing of such adverse claim within the sixty days' period of posting and publication, or within six months thereafter, the party who files the adverse claim will be required, under the act, within sixty days after the filing of such adverse claim, to begin an action to quiet title in a court of competent jurisdiction within the district of Alaska.

All papers filed should have indorsed upon them the precise date of filing, and upon the filing of an adverse claim within the time prescribed by the statute all proceedings on the application for patent will be suspended with the exception of the completion of the publication and posting of notice and plat and filing the necessary proof thereof, until final adjudication of the rights of the parties. In case of final judgment rendered on an adverse suit to determine the right of possession, the party entitled under the decree must, before he is allowed to make entry, file a certified copy of the judgment.

Where such suit has been dismissed a certificate of the clerk of the court to that effect, or a certified copy of the order of dismissal, will be sufficient. Where no suit has been commenced against the application for patent within the statutory period, a certificate to that effect by the clerk of the territorial court having jurisdiction will be required.

The notice of location and the application for patent should respectively, so far as practicable, in substance follow the forms prescribed in the coal-land circular of July 31, 1882, for declaratory statement and affidavit at time of purchase.

Section 4 provides—

"That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska."

A copy of the act is attached.

Very respectfully,

J. H. FIMPLE, *Acting Commissioner.*

Approved July 18, 1904.

THOS. RYAN, *Acting Secretary.*

[PUBLIC—No. 204.]

AN ACT To amend an act entitled "An act to extend the coal-land laws to the district of Alaska," approved June sixth, nineteen hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

SEC. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the surveyor-general for the district of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the district of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat of survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: *Provided*, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

SEC. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

SEC. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska.

Approved, April 28, 1904.

Coal-land laws and regulations thereunder (General Land Office, April 12, 1907), with amendments and supplemental circulars—Reprint July 11, 1908.

(COAL-LAND LAWS AND REGULATIONS THEREUNDER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 12, 1907.

The following coal-land laws relating to the public land States and Territories and to the district of Alaska, together with the rules and regulations as now applicable, are herewith published for the instruction of the local land officers and the information of intending applicants. All rules and regulations heretofore issued under said laws are hereby abrogated.

PART I.—Title XXXII, Chapter 6.

MINERAL LANDS AND MINING RESOURCES.

ENTRY OF COAL LANDS. (3 MAR., 1873, C. 279, S. 1, V. 17, P. 607.)

Sec. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

PREEMPTION OF COAL LANDS. (IBID., S. 2.)

Sec. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

PREEMPTION CLAIMS OF COAL LAND TO BE PRESENTED WITHIN SIXTY DAYS, &c. (IBID., S. 3.)

Sec. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

ONLY ONE ENTRY ALLOWED. (IBID., S. 4.)

Sec. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

CONFLICTING CLAIM. (IBID., S. 5.)

Sec. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

RIGHTS RESERVED. (IBID., § 6.)

Sec. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

RULES AND REGULATIONS.

1. The sale of coal lands is provided for—
 (a) By ordinary *cash entry* under section 2347;
 (b) By *cash entry* under a *preference* right to purchase acquired by compliance with the provisions of section 2348.

2. Coal lands may be entered only after survey and by legal subdivisions. The lands must be vacant and unappropriated and must contain workable deposits of coal and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than \$5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, will not hereafter be recognized.

6. Information will be furnished registers and receivers by the Commissioner of the General Land Office of the price at which all coal lands in their respective districts will be offered. The local land officers will, from time to time, be furnished with schedules and maps (1) showing lands known to lie without ascertained coal areas and open to entry under the general land laws, according to the character of each particular tract; (2) showing lands known to contain workable deposits of coal, whereon prices will be fixed upon information derived from field examination; and (3) showing lands containing coal of such character as may, from their location at a distance from transportation lines, be sold at the minimum price fixed by the statute as hereinafter stated.

Local land officers will allow *coal* entries for lands in the first and third classes at the minimum price fixed by the statute, and for those in the second class at the prices stated in the schedules and maps furnished them. Lands listed in classes 2 and 3 are subject to entry under the coal-land laws only, unless shown by the applicant to be of such character as to be subject to entry under some other law. For those lands listed as of the first and third classes (when entered under the coal-land laws) the price is not less than \$10 per acre when situated more than 15 miles from a completed railroad and \$20 when situated within 15 miles of a completed railroad; and where the lands lie partly without such limit, the higher price must be paid for each smallest legal subdivision the greater part of which lies within 15 miles of such railroad. The term "completed railroad" is construed to mean a railroad *actually constructed, equipped, and operating* at the date of entry. The distance is to be calculated from the point on such railroad nearest the lands applied for, and the facts in each case must be shown by the affidavit of the applicant, corroborated by the affidavit of some disinterested credible person having actual knowledge thereof.

7. A preference right of entry accrues only where a person or association of persons, severally qualified, have opened and improved a coal mine or mines upon the public lands and shall be in actual possession thereof, and not by the filing of a declaratory statement. A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed.

There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the *opening and improving* of the mine as a condition precedent to a preference right

under section 2348 of the Revised Statutes. To preserve a preference right of entry specified in the statute the person or association of persons having acquired the same must present to the register of the proper land district, within sixty days from the date of actual possession and commencement of improvements upon the land, a declaratory statement therefor in all cases where the township plat has been filed. When the township plat is not on file at the date of such improvement such declaratory statement must be presented within sixty days from the receipt of such plat at the district land office.

8. After entry has been allowed the local officers have no authority to order a hearing or make further determination with respect to it, except upon instructions from the General Land Office. They will, however, receive all protests against it and promptly forward them, together with a statement of the facts shown by their records, for consideration and action.

9. Prior to entry it is competent for the local officers to order a hearing on sufficient grounds set forth under oath by any protestant.

10. When it is sought to purchase otherwise than in the exercise of a preference right the party will himself make oath to the following application, which must be presented to the register:

"I, _____, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, to purchase the _____ quarter of section _____, in township _____ of range _____, in the district of lands subject to sale at the land office at _____, and containing _____ acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that I am twenty-one years of age; a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held, except _____ or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not to my knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God."

11. Where a preference right of entry is sought to be preserved the required declaratory statement must be substantially as follows:

"I, _____, do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the _____ quarter of section _____ of township _____ of range _____, in the district of the lands subject to sale at the district land office at _____; and I do solemnly swear that I am _____ years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held, except _____ or purchased any coal lands under the aforesaid provisions of the Revised Statutes; that I was in possession of, and commenced improvements on, said tract on the _____ day of _____, A. D. 19____, and have ever since remained in actual possession continuously; that I have opened and improved a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of _____ dollars, the labor and improvements being as follows: (Here describe the nature and character of the improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God."

12. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but the local officers will allow no party to make final proof and payment except on special written notice to all others who appear on their records as claimants to the same tract. No notice will be given to parties whose declaratory statements have expired by limitation under the law.

13. A declarant will not be permitted to file after the expiration of the sixty days allowed nor to exercise a preference right of purchase after the expiration of the year.

14. When it is sought to purchase, in the exercise of a preference right, the applicant must himself make the following affidavit, which must be presented to the register:

I, _____, claiming, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the preference right to purchase the _____ quarter of section _____, in township _____ of range _____, subject to sale at the district land office at _____, hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held, except _____ or purchased, either as an individual or as a member of an association, any coal lands under the aforesaid provisions of the law; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of _____ dollars, the nature of such improvements being as follows: _____; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God."

15. Where purchase and entry, whether in the exercise of a preference right or otherwise, is made by an association, each member thereof must subscribe and swear to the application or affidavit, the necessary changes being made to cover the joint possession and expenditure and the purchase and entry in their joint interest.

16. Each application, declaratory statement, and affidavit, forms whereof are given above, must be verified before the register or receiver or some officer authorized by law to administer oaths in the land district wherein the lands involved are situate. (Amendment of Apr. 29, 1908.)

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14 the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days' publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed.

The claimant will be required within thirty days after the expiration of the period of newspaper publication to furnish the proofs specified in said paragraph and tender the purchase price of the land. Should the specified proofs and purchase price be not furnished and tendered within this time, the local land officers will thereupon reject the application, subject to appeal. Furthermore, in the exercise of a preference right to purchase, no part of the thirty-day period specified herein may extend beyond the year fixed by the statute. (Amendment of Nov. 30, 1907.)

19. Of the following forms, the one appropriate to the sections of the Revised Statutes under which application is made should be used for publication of all notices of application to enter coal lands:

Notice for publication.

COAL ENTRY.

(Sec. 2347, R. S.)

_____ Land Office,
_____, 19__.

Notice is hereby given that _____, of _____, county of _____, State (or Territory) of _____, has this day filed in this office his application to purchase, under the provisions of section 2347, U. S. Revised Statutes, the _____ of section No. _____, township No. _____, range No. _____.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the sale thereof to applicant, should file their affidavits of protest in this office on or before the _____ day of _____, 19__, otherwise the application may be allowed.

_____,
Register.

Notice for publication.

COAL ENTRY.

(Secs. 2348-52, R. S.)

_____ Land Office,
_____, 19__.

Notice is hereby given that _____, of _____, county of _____, State (or Territory) of _____, who, on the _____ day of _____, 19__, filed in this office his coal declaratory statement for the _____ of section No. _____, township No. _____, range No. _____, has this day filed in this office his application to purchase said land under the provisions of sections 2348 to 2352, U. S. Revised Statutes.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by applicant, should file their affidavits of protest in this office on or before the _____ day of _____, 19__.

_____,
Register.

20. When it is sought to purchase, either by ordinary cash entry or in the exercise of a preference right, the register, if he finds the tract applied for is vacant, surveyed, and unappropriated, and that the claimant has complied with all the laws and regulations relating to the acquisition of coal lands, will so certify to the receiver, stating the prescribed purchase price, and the applicant must then pay the same.

21. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, whence, if the proceedings are found to be regular, a patent will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land office.

22. An application for cash entry will be subject to any valid adverse right which may have attached to the same land pursuant to section 2348, Revised Statutes.

23. Qualified persons or associations who are lawfully in possession of tracts of coal lands which are still unsurveyed may, under sections 2401, 2402, and 2403, Revised Statutes, as amended by the act of August 20, 1894, apply to the surveyor-general for the survey of the township or townships, or portions thereof, embracing the lands claimed, to be specified as nearly as practicable. Each such application must be accompanied by the affidavit of the applicant or applicants, duly corroborated by at least two competent persons, setting forth the qualifications of the former as claimant or claimants of the land, the facts constituting their possession, the character of the land, and such other facts in the case as are essential in that connection. If the surveyor-general approves the application, he will thereupon transmit it to the General Land Office with the affidavits and his report.

24. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior" will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

25. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with No. 1 and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal lands they will continue the same without change.

PART II.—Coal lands in Alaska.

[Act June 6, 1900 (31 Stat., 658).]

AN ACT To extend the coal-land laws to the district of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public-land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

[Act April 28, 1904 (33 Stat., 525).]

AN ACT To amend an act entitled "An act to extend the coal-land laws to the district of Alaska," approved June sixth, nineteen hundred

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

SEC. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor-general for the district of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the district of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat of survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: *Provided*, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

SEC. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

SEC. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska.

RULES AND REGULATIONS.

1. Persons or associations of persons locating or entering coal lands in the district of Alaska under the provisions of the act of April 28, 1904 (33 Stat. L., 525), amendments of the act of June 6, 1900 (31 Stat. L., 330), are required to possess the qualifications of persons or associations making entry under the general coal-land laws of the United States, and are subject to the same limitations.

2. The lands must be vacant and unappropriated, and must contain deposits of coal, and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years, who is a citizen of the United States, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land laws.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than \$5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold other coal lands thereunder. The right so to enter or hold is exhausted, whether an entry embraces in any instance the maximum area allowed by the law or less.

6. There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the *opening and improving* of the mine as a condition precedent to the right to apply for patent.

7. The requirement of the statute with respect to the form of the tract sought to be entered is construed to mean that the boundary lines of each entry must be run in cardinal directions, i. e., due north and south and east and west lines, by reference to a true meridian (not magnetic), with the exception of meander lines on meanderable streams and navigable waters forming a part of the boundary lines of a location. Those meander lines which form part of the boundary of a claim will be run according to the directions in the Manual of Surveying Instructions, but other boundary lines will be run in true east and west and north and south directions, thus forming rectangles, except at intersections with meandered lines.

8. The permanent monuments to be placed at each of the four corners of the tract located may consist of—

First. A stone at least 24 inches long, set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground, and surrounded by a substantial mound of stone or earth.

Third. A rock in place; and, whenever possible, the identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, or other objects, permanent objects being selected for bearings whenever possible.

9. It is further provided by the first section of the act that within one year from the date of the passage of the act or within one year from making the location there shall be filed for record in the recording district and with the register and receiver of the land district in which the land is situated a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same. In other words, the notice should contain a complete description in every particular of the claim as it is marked and monumented upon the ground.

10. By the second section of the act the locator or his assigns is allowed three years from the date of filing the notice prescribed in the first section of the act within which to file an application with the local land officers for a patent for the land claimed. It will thus be seen that persons or associations of persons claiming coal lands in that district at the date of the passage of the act have four years from location or from the date of the act within which to present their applications for patent.

11. Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, forfeit their rights to the particular tract located.

12. With the application for patent the claimant must file a certified copy of the plat of survey and field notes thereof made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the surveyor-general for the district of Alaska. Under this clause of the act it will be allowable for the claimant, at his own expense, to procure the making of a survey by one of the officials mentioned without first making application to the surveyor-general, but the survey when made is to be submitted to and approved by the surveyor-general and by him numbered serially.

13. The survey must be made in strict conformity with or be embraced within the lines of the location as appears from the record thereof with the recorder in the recording district, and must be made in accordance with the regulations relative to lode and placer mining claims so far as they are applicable.

14. Upon the presentation of an application for patent, if no reason appears for rejecting it, it will be received by the register and receiver and the claimant required to publish a notice thereof for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and to cause a copy thereof, together with a certified copy of the official plat of survey, to be posted and remain posted throughout the period of publication in a conspicuous place upon the land applied for, and the register will post a copy of such notice and official plat in his office for the same period. When the notice is published in a weekly newspaper nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

15. The notice so published must embrace all the data given in the notice posted upon the claim and in the local land office. In addition to such data, the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

The publication in the newspaper and the posting upon the land and in the local land office must cover the same period of time.

16. Upon the expiration of the sixty-day period prescribed the claimant may file in the local land office a sworn statement from the office of publication, to which shall be attached a copy of the notice published, to the effect that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during the sixty-day period of publication, giving the dates. The register will also file with the record a certificate showing that the notice and plat were posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

Not earlier than six months after the expiration of the period of publication, if no objections are interposed or adverse claim filed, entry may be allowed upon payment of the price per acre specified by the act, which is \$10 per acre in all cases.

17. The proviso to the second section of the act is as follows:

"That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district."

The term "shore" is defined to mean the land lying between high and low water marks of any navigable waters within said district.

18. Section 3 provides for the assertion by any person or association of persons of an adverse claim, and requires that such adverse claim shall be filed during the period of posting and publication or within six months thereafter; that it shall be under oath, and set forth the nature and extent thereof.

19. An adverse claim may be verified by the oath of the adverse claimant or by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and when verified by such agent or attorney in fact he must distinctly swear that he is such agent or attorney in fact and accompany his affidavit by proof thereof. The adverse claimant should set forth fully the nature and extent of the interference or conflict by filing with his adverse claim a plat showing his entire claim and its situation or position with relation to the one against which he claims; whether he claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance or duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof, and amount paid, which facts will be supported by the affidavits of one or more witnesses, if any were present at the time; and if he claims as locator, he must file a duly certified copy of the location notice from the office of the proper recorder and his affidavit of continued ownership.

20. Upon the filing of such adverse claim within the sixty-day period of posting and publication, or within six months thereafter, the party who files the adverse claim shall, under the act, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska.

21. All papers filed should have indorsed upon them the precise date of filing; and upon the filing of an adverse claim within the time prescribed by the statute all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notice and plat and filing the necessary proof thereof, until final adjudication of the rights of the parties. In cases of final judgment rendered, the party entitled under the decree must, before he is allowed to make entry, file a certified copy thereof.

22. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient. Where no suit

has been commenced against the application for patent within the statutory period, a certificate to that effect by the clerk of the territorial court having jurisdiction will be required.

23. In connection with the foregoing, it is to be borne in mind that by section 4 of the act it is declared:

"That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska."

24. An assignment to a qualified person of a preference right of entry under the act of April 28, 1904, will be recognized when properly executed. Proof and payment by the assignee must be made, however, in the same manner and within the same time as though there had been no assignment.

25. The following forms for notice of location and application for patent should be used:

NOTICE OF LOCATION.

I, _____, of _____, having on the _____ day of _____, 19____, opened and improved a coal mine on the following-described tract (here describe the lands by metes and bounds in rectangular form with north and south boundary lines run according to the true meridian, and a reference to such natural or permanent objects as will readily identify the same), do hereby locate the same as provided by the Alaska coal-land act of April 28, 1904 (33 Stats., 525); and I do solemnly swear that I am a citizen of the United States (or have declared my intention to become a citizen of the United States); that I am over the age of 21 years; that I have never either as an individual or as a member of an association held, except _____, or purchased any coal lands of the United States; that I have remained in actual possession of said land continuously since the _____ day of _____, 19____; that I have expended in labor and improvements on said mine the sum of _____ dollars, the labor and improvements being as follows (here describe the nature and character of such improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described lands and with each and every portion thereof; that my knowledge of said lands is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper or other minerals. So help me God.

Dated _____, 19____.

(Jurat.)

APPLICATION FOR PATENT.

I, _____, claiming under the provisions of the act of April 28, 1904 (33 Stats., 525), amendatory of the act of June 6, 1900 (31 Stats., 658), extending the coal-land laws to the district of Alaska, do hereby apply to purchase the lands described in the accompanying field notes and plat and subject to sale at the district land office at _____, Alaska; and do solemnly swear that my title to said tract is as follows: _____ as will more fully appear by the certified copy of location notice and abstract of title filed herewith; that I am above the age of 21 years, and a citizen of the United States; that I have not hitherto held, except _____, or purchased, either as an individual or as a member of an association, any coal lands under the provisions of the coal-land laws; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of _____ dollars, the nature of said improvements being as follows: _____; that I am now in the actual possession of said mines and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every portion thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, copper, or other minerals. So help me God.

Jurat.

26. The notice of location and the application for patent, the forms of which are given above, may be sworn to by the claimant before any officer authorized by law to administer oaths; but the authority of said officer must be properly shown.

27. Any party duly qualified under the law, *after swearing to his notice of location or application for patent, may, by a sufficient power of attorney duly executed under the laws of the State or Territory in which such party may be then residing, empower an agent to file with the register of the proper land office the notice of location or application for patent, and also authorize him to make payment for and entry of the lands in the name of such qualified party; and when such power of attorney shall have been filed in the local land office such agent may act thereunder as indicated; but no person will be permitted to act as such agent for more than four applicants.*

28. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, any qualified person may make the required affidavit as to its character; but whether this affidavit is made by the claimant or by another it must be corroborated by the affidavits of two disinterested and credible witnesses having personal knowledge of the facts.

29. The "Rules of practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior," will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands.

30. Local officers will report at the close of each month as "sales of coal lands" all filings and entries in separate abstracts, commencing with number one and there-after proceeding consecutively in the order of their reception.

Where a series of numbers has already been commenced by sale of coal lands, they will continue the same without change.

R. A. BALLINGER,
Commissioner.

DEPARTMENT OF THE INTERIOR,
April 12, 1907.

Approved.

JAMES RUDOLPH GARFIELD,
Secretary.

MONDAY, JANUARY 31, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR
DEPARTMENT AND FORESTRY SERVICE,
Washington, January 31, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met, pursuant to adjournment at 2.30 p. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, Paynter, and Fletcher; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Joseph R. Cotton, jr., representing Mr. Louis R. Glavis.

The CHAIRMAN. Will Mr. Glavis please take the stand if he is present.

TESTIMONY OF L. R. GLAVIS—Resumed.

Mr. BRANDEIS. Mr. Chairman, before you begin the examination of Mr. Glavis I should like to inquire whether any progress has been made in the collection of the documents which we have requested.

The CHAIRMAN. They are at work on them at the Land Office, but we have not received any yet. The next morning after you gave me the list I was down there and left a copy of the list with the Land Office, and they promised to secure all the documents as soon as they could, but we have not received any yet.

Mr. BRANDEIS. That was made on the 28th, the request for documents. If it meets the views of the committee, we think the request for documents should appear in the record, so that we shall be able to check up what we receive as compared with what we requested.

The CHAIRMAN. As soon as we get them they will go in, of course.

Mr. BRANDEIS. I mean the request should go into the record.

Mr. GRAHAM. That is, a tabulated statement of the documents that you wish?

Mr. BRANDEIS. Yes.

The CHAIRMAN. Yes; that will be put in the record.

(The request is as follows:)

JANUARY 27, 1910.

HON. KNUTE NELSON,
Chairman Joint Investigation Committee.

DEAR SIR: Pursuant to the request made by you at the meeting of the committee on January 26, we submit to you the following list of documents which we desire to have produced at this investigation:

1. Unsigned copy of statement made by Watson Allen about March, 1907, now or formerly filed in land office at Seattle, concerning agreement entered into relating to conveyance in escrow of claims to coal lands involved in proceedings of the United States against the Wilson Coal Company, Sterling Coal Company, et al.

2. Certified copy of bill and answer and of opinion rendered in January, 1910, and of the depositions of Watson Allen, P. C. Richardson, and of the several Wilsons, as regards the above-mentioned matter, now or formerly filed in the office of the United States circuit court for the western district of Washington in the suits of the United States v. Wilson Coal Co., Sterling Coal Co., Watson Allen, etc.

3. Copy of letter of L. R. Glavis, chief field division, to commissioner, November 5, 1907, inclosing report or affidavit of Special Agent H. Jones, November 1, 1907, together with such report or affidavit, and copy of any reply thereto.

4. Original letter of L. R. Glavis to commissioner, November 12, 1907, and all other papers on file in the General Land Office relating to soldier's additional application No. 69 therein referred to.

5. Daily reports and special agents, report books now or formerly on file in the General Land Office or the Seattle or Portland, Oreg., land offices of the following persons for the periods respectively set forth:

(a) Special Agent H. K. Love, June 15, 1907, to date of retirement from the service.

(b) Special Agent Horace Tillard Jones, June 15, 1907, to December 16, 1909.

(c) Special Agent S. N. Stoner, March 10, 1908, to May 15, 1908; March 4, 1909, to December 16, 1909.

(d) Special Agent Andrew Kennedy, March 10, 1908, to May 15, 1908; March 4, 1909, to December 16, 1909.

(e) Special Agent Arthur R. Bowman, March 4, 1909, to December 16, 1909.

(f) Special Agent Gery, June 1, 1909, to September 16, 1909.

(g) Daily reports, daily report books, and monthly expense account Louis R. Glavis, March 4, 1907, to September 16, 1909.

6. Personal letter, L. R. Glavis to H. H. Schwartz, dated on or about November 22, 1907.

7. All letters or telegrams received from and copies of letters and telegrams sent bearing date between November 23, 1907, and December 7, 1907, between L. R. Glavis and Fred Dennett, assistant commissioner, or personally, or H. H. Schwartz, chief of field division, or personally in relation to Alaska coal lands, or said Glavis's coming to Washington, D. C.

8. All letters and telegrams now or formerly on file in Juneau, Alaska, land office, from L. R. Glavis to H. K. Love, relating to Alaska coal claims, including, among others, letter of L. R. Glavis to H. K. Love, dated January 31, 1908, and copies of all replies from such letters and telegrams.

10. All letters and other papers now or formerly in the Juneau, Alaska, land office relating to the Cunningham claims, so called, and particularly all communications from and copies of all communications to Clarence Cunningham. Also all the papers delivered to Special Agent Bowman in 1909, and for which receipt was given by him, including among the others a letter dated January 15, 1908, from the said Cunningham to the register and receiver of the said office.

11. Personal letter from L. R. Glavis to H. H. Schwartz, dated in January or February, 1908, calling attention to preliminary investigation of Cunningham case and necessity of field examination.

12. Telegram of L. R. Glavis, dated March 6, 1908, in relation to Alaska coal claims.

13. Letter of L. R. Glavis, dated in March or April, 1908, transmitting affidavit of Special Agent H. T. Jones concerning H. K. Love, together with said affidavit.

14. All letters and telegrams, official and personal, between Fred Dennett and R. A. Ballinger, bearing date between March 4, 1908, and March 4, 1909, and also stenographer's notebooks containing letters dictated by said Dennett during said period.

15. All letters and other communications between General Land Office and S. J. Colter, and personal letter or telegram from H. H. Schwartz to Special Agent S. J. Colter or from said Colter to Schwartz in relation to Alaska coal land or in relation to Glavis's so-called charges to the President.

16. Original report of H. T. Jones to L. R. Glavis, dated December 2, 1907, now or formerly in General Land Office.

17. Personal letter of L. R. Glavis to Schwartz, of April, 1908, referred to in letter of April, 1908, to Hon. R. A. Ballinger, September 10, 1909. (S. Doc. 248, p. 99.)

18. Original telegram H. K. Love to Hon. R. A. Ballinger, January 11, 1908, and memorandum of Carr on envelope.

19. All the papers on files of the General Land Office or of any local land office relating to the grants of rights of way to the Des Chutes River Railroad Company or other relations with that company.

20. The unsigned or undelivered draft of patents of the Cunningham claims and any memorandum on file in relation thereto.

21. The telegram of Hon. R. A. Ballinger to Love of January, 7 1908, referred to on page 35 of the printed record.

22. Telegram of Love of January 4, 1908, referred to in Commissioner Ballinger's telegram of January 7, 1908.

23. Any record of the hearing given to Ex-Governor Moore by Commissioner Ballinger in December, 1907, referred to by Schwartz on page 224 and again on page 460 of the printed record.

24. Letter from Mr. Todd, United States attorney at Seattle, Wash., about May, 1908, relating to the proposed criminal prosecution of certain Alaskan coal claimants, which letter should now be on file either in the General Land Office or in the Seattle land office, and all other papers in either of said files bearing upon the same matter.

25. Telegram of L. R. Glavis to commissioner April 11, 1909, and reply of commissioner to Glavis April 13. Also original letter of Commissioner Dennett to Glavis of June 3, 1908.

In pursuance of your request to name such witnesses as we would like to have called, we respectfully request that the committee subpoena—

Special Agent Horace Tillard Jones, Portland, Oreg.

Arthur R. Bowman, Cheyenne, Wyo.

Andrew Kennedy, Seattle, Wash.

Henry M. Hoyt, Attorney-General, Porto Rico.

P. C. Richardson, Seattle, Wash.

We shall submit as soon as may be certain further requests for documents and witnesses, the exact specifications of which we are not able to furnish at present.

Very respectfully,

LOUIS D. BRANDEIS,
JOSEPH COTTON, Jr.
Counsel for Louis R. Glavis.

Mr. BRANDEIS. There were a few additional ones that I will give the clerk, if I may.

In looking over Saturday's proceedings I notice that the list of letters which we desire to have introduced in evidence, but did not read to the committee, do not appear in the record.

The CHAIRMAN. I wish you would call the stenographer's attention to the page of this book here [indicating Senate Document 248].

Mr. BRANDEIS. I will hand him the list and ask that these letters, etc., appear in the record of this proceeding.

(The letters are as follows:)

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., June 21, 1907.

Mr. HORACE T. JONES,
Special Agent, General Land Office, Portland, Oreg.

STR: October 6, 1905, Special Agent H. K. Love submitted to this office a letter setting out various schemes under which coal lands were being entered in Alaska. With said letter he submitted copy of an affidavit made by David Lawrence White, dated the 6th of September, 1905, at Catalla, Alaska.

Under dates of November 9, 1905, and March 20, 1906, Mr. M. S. Duffield, writing from Valdez, Alaska, setting forth with some particularity that Mr. Frank Watson, at Seattle, Wash., as representative of certain Chicago capitalists by that name, had taken steps to secure 13,280 acres of Chickaloon Creek coal lands on the Matanuska River, Alaska; that in making the applications for these lands, 83 names had been used. Some of these names are alleged to be people living in Seward and others were Seattle laborers. The effect of the statements contained in Mr. Duffield's letters is that these parties were engaged in a criminal conspiracy denounced in section 5440, Revised Statutes, the object of which conspiracy was to illegally acquire title to coal lands contrary to the statutes in relation thereto. From the affidavit of David L. White, above referred to, it appears that A. H. Stracey, local manager and representative of the Pacific Oil and Coal Company (Limited), commonly known locally as the "English Company," was indicated as being engaged in hiring persons, some of whom were designated in his affidavit by name, for the purpose of entering each 160 acres of coal lands for the benefit of said company, and they were to receive for making said locations the sum of \$100, and they were also paid at the rate of \$2.25 a day for doing assessment work upon such lands.

I have attached to this letter a copy of a letter of Mr. Love of October 6, 1905; the affidavit of David L. White of September 6, 1905, and the letters of Mr. Duffield of November 25, 1905, and March 2, 1906, and a description of the coal declaratory statements made by parties for lands in that locality so far as they appear on record in this office, all of which may be of service to you in your investigations. In addition thereto, I inclose you copies of letter of Henry R. Harriman, attorney at Seattle, Wash., dated October 10, 1905, to Mr. Love; a copy of letter of inquiry of November 14, 1906, from George F. Mundy, Seattle, together with a copy of the reply of this office to Mr. Mundy dated November 30, 1906; also a copy of a letter of this office of December 11, 1905, to Special Agent Love, which last-mentioned series of inclosures may or may not be of importance in your investigation.

This office also calls attention to the fact that these complaints are about two years old, and if there has been incurred a criminal liability the matter must be presented to a United States grand jury within three years of the last overt act taken with a view of consummating the purpose of the conspiracy.

It is desired by this office that you make a thorough, complete, and energetic investigation of the charges contained in Mr. Duffield's letter and those referred to in Mr. White's affidavit, and any other like violations of the law in reference to coal entries in that locality. This you will do to the exclusion of any other business, and you will confine your efforts to these cases until such time as you have thoroughly covered the whole field of investigation.

As a preliminary to your work it is suggested that you give a few days' time to a consultation of the decisions as found in the Federal and Supreme Court reports upon the question of conspiracy under section 5440, and perjury and subornation referred to, and that you will also read and take note of those court cases which have particular application to coal lands. Among them is the case of the United States v. The Trinidad Coal and Coke Company, reported in 137 U. S. After you have made yourself thoroughly conversant with the laws it is alleged these parties have violated, and with the decisions of the courts as to what state of facts constitute such violations, you will proceed with your investigation in the field. In making such investigation you will endeavor to interview all of the alleged fraudulent or dummy entrymen and procure from them affidavits setting up the true state of facts under which these entries were made. You are particularly charged with the necessity of securing, in affidavit form, whatever evidence you expect subsequently to be used to advantage on behalf of the Government, likewise any evidence which tends to show the good faith of any particular transaction. In making your investigations you will also bear in mind the fact that criminal liability in these cases expires within three years from the date of the crime of perjury or subornation of perjury and from the date of the last overt act in the consummation of any conspiracy, and you will therefore give preference in time in examination where it is necessary by reason of such statute.

You have been selected to make this examination for the reason that this office believes that you have the necessary ability and integrity, and you are authorized to travel to such points in Alaska or Western States as may be necessary in order to cover the investigation. It will probably be necessary for you to examine the records in the land office at Juneau.

From time to time, as this investigation progresses, and as you take affidavits, you will submit preliminary reports informing this office of the progress you are making and attach thereto copies of the affidavits and other evidence secured by you.

In view of the fact that this work will require your presence in Alaska at different times and will necessitate more than the ordinary expenses upon your per diem account, this office will, upon receipt of a wire from you that you have entered upon this investigation, submit to the department a recommendation that your salary be increased per annum.

Very respectfully,

FRED DENNETT,
Acting Commissioner.

(Morris F. Duffield's present address is box 284, Ely, Nev.)

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Seattle, Wash., August 2, 1907.

The honorable COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: I have the honor to state that the following persons have recently, through Clarence Cunningham, as agent, entered at the land office, Juneau, coal lands within the Kyak recording district (Katalla), Alaska: J. G. Cunningham, Fred C. Davidson, Michael Deneen, F. Cushing Moore, Orville G. Jones, C. J. Smith, Walter V. Moore, Francis Jenkins, Ignatius Mullen, Horace C. Henry, F. F. Johnson, Alfred Page, Arthur D. Jones, N. B. Nelson, Frank A. Moore, John A. Finch, A. B. Campbell, Henry White, R. C. Riblett, Charles Sweeney, Henry Wick, Wm. E. Miller, Hugh B. Wick, Henry W. Collins, and Henry L. Scofield. Also an entry by Cunningham in his own behalf.

These are pending in your office on applications for patent. In a recent conversation with Mr. Cunningham, who is fully informed on all matters past and all future plans of his principals, he stated that it had always been the hope of the several persons that arrangements might be effected after entry for the joint working of the lands, and that since entry in the local office an effort had been made by him to secure the formation of a company from amongst the entrymen for the purpose of developing and operating a coal mine of the tracts so entered; that for such purpose a meeting of such entrymen was recently held at Spokane and a committee appointed for the promotion of such an organization and to secure the transfer of the various holdings to a trust company, subject to the perfection of such plans; that such is now in course of formation.

At different dates I have recommended to the register and receiver, Juneau, the allowance of the applications of the above entrymen. I believe the action of entrymen toward the formation of a company pending patent, as above set out, to be allowable under the law, but deem it proper to lay the information before you.

Very respectfully,

H. K. LOVE,
Special Agent, General Land Office.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Seattle, August 10, 1907.

Honorable COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By letter dated June 21, 1907, Special Agent Horace T. Jones was instructed to make a thorough and complete investigation of certain charges contained in the letter of M. S. Duffield, of Valdez, Alaska, affecting the question of the bona fides of certain applications to enter the coal lands of Alaska.

Special Agent Jones on June 27, 1907, addressed a letter to M. S. Duffield, then said to be at Ely, Nev., asking Mr. Duffield for further particulars regarding the subject-matter of his said charges. The answer of Mr. Duffield, dated July 17, 1907, is hereto attached and marked "Exhibit A."

After a trip to the United States land office at Juneau, Alaska, Mr. Jones came to Seattle, Wash., with a complete list of all coal-land filings in the United States land office at Juneau made to the date of Mr. Jones's departure for Seattle. The said application of filings, number 523, 33 of which, in the group hereinafter referred to, as the "Cunningham group," have had entry made upon them.

On July 22, 1907, Mr. H. K. Love, special agent of the General Land Office, was directed verbally by the honorable commissioner to join with Mr. Jones in the investigation of the matters herein referred to. Mr. Love attended to the Seattle portion of the investigation and Mr. Jones to the part covered by the work done in Spokane, Wash., and Portland, Oreg.

After conferring on several different dates with the honorable commissioner it was decided that it would be sufficient for the time being to take statements from two or three persons representing each "group" of entries and in any way obtain a general idea of how far the parties taking coal lands in Alaska were complying with the requirements of the law with respect to the manner of obtaining title thereto.

Since beginning the investigation we have taken about 25 statements from the different persons representing the aforesaid "groups," and the said statements are hereto attached and made a part of this report and will be enumerated herein by numbers of exhibits referring to said groups:

M. A. Green group.—See Exhibits Nos. 1 to 7, inclusive.

E. J. Rathbone group.—See Exhibits Nos. 8 and 9.

C. H. Doughton group.—See Exhibits 10, 11, and 12.

J. R. Young group.—See Exhibits 13 and 14.

W. N. Letcher group.—See Exhibit No. 15.

Frank Watson group.—See Exhibit No. 16.

James T. Royles group.—See Exhibit No. 17.

Chesum group.—See Exhibit No. 18.

A. H. Steacy group.—See Exhibit No. 19 and Exhibit 20.

C. Cunningham group.—See Exhibit No. 21.

James Wardell group.—See Exhibit 22 and Exhibit 23.

Christopher and Simmonds group.—See Exhibit No. 24.

A. B. Hunt group.—See Exhibit No. 25.

The "groups" represented by the following agents will not be reported on in this report, for the reason that the individuals making up the said groups reside without the vicinity of Seattle, Portland, or Spokane; and it was thought that a sufficient amount of data could be secured from these persons who were nearer headquarters to enable the agents in this investigation to make a showing in the matter that would result in further investigations of all the entries or applications.

The "groups" referred to above are:

L. A. Thurston group.

John W. Hartline group.

Torger A. Feed group.

Robert A. Foster group.

A. E. Dickerman group.

George Harkrader group.

A. F. Runnells group.

N. E. Smith group.

In addition to the foregoing groups there are a number of filings which appear to have been made by the individual person.

While taking the statement of J. R. Young, of Seattle, Wash., he said that the Christopher claims were in a pool or combine, and that a notary public in Alaska, named Hamilton, had made out filing papers and powers of attorney in the names of persons who did not realize that their names were being used for that purpose and knew nothing of the matter. The Christopher group and the Simmonds group appear to be under the same management.

In a search for one S. R. Blonger, located by George Simmonds, agent, it was learned that he, Blonger, had moved to Denver, Colo., but his street address could not be found. A Mrs. Dickson, with whom Blonger formerly roomed here in Seattle, Wash., a negress, stated that she had heard Blonger talk of his coal claim; that he belonged to some sort of club; and that all the members of the club had coal claims and handled them on shares. These claims are in Alaska; that Blonger went down three or four times to sign some papers in connection with his coal claim.

E. House, located by E. G. Rathbone, agent, stated that he knows nothing of his claim more than that he has paid about \$100, and that he will get stock from the Anglo-American Coal and Coke Company after a while; that George H. Hill, Fred Stanley, and H. L. Pittock are at the head of the said coal company; that he trusted the entire management of the coal claim with the aforesaid gentlemen.

Ignatius Mullen, son of the receiver of the United States land office at Juneau, Alaska, was located on a coal claim in Alaska by Clarence Cunningham. Mullen, senior, states that he has put about \$3,600 into his son's claim, but I think he claims that this money is by way of a loan to said son. A statement will be taken from the son when he can be found, and one from Mullen, senior, when Mr. H. K. Love, special agent, returns to Juneau, which will establish the good or bad faith of this coal-land filing of Ignatius Mullen.

A complete list of all filings made up to the time of the departure of Special Agent Jones from Juneau, Alaska, about July 17, 1907, will be forwarded in a short time with as many street addresses of locators as can be secured.

In view of the fact that the majority of the statements taken in this matter seem to indicate that the lands which are subject to this investigation appear to have been taken under, to say the least, a misapprehension of the rights of the parties to combine and locate together under one financial arrangement, it is respectfully recommended that a strict investigation be further made of each and every locator's connection with other locators in the groups above mentioned.

This is particularly necessary in the matter of the locations made by Christopher, Simmons, Doughton, Stracey, and Chezum.

Respectfully,

HORACE TILLARD JONES,
Special Agent, General Land Office.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Portland, Oreg., August 13, 1907.

HONORABLE COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Referring to my investigation of certain coal-land applications for land in Alaska, I have the following list of names with the city and state address of the applicant for use by your office in a further investigation of frauds in coal lands in Alaska:

Spokane, Wash.

Applicant's name.	D. S. No.	Name of agent.
Anderson, Andrew.....	408	Doughton, C. R.
Boyd, Geo. W.....	406	Do.
Jacobs, Fred.....	401	Do.
Oehler, Chris D.....	402	Do.
Oehler, Arthur J.....	403	Do.
Oehler, John E.....	404	Do.
Tetherill, King.....	403	Do.
Bing, Christina F.....	478	Do.
Boetscher, Wm. F.....	480	Do.
Brown, Wilhelmina.....	487	Do.
Capell, Walter D.....	400	Do.
Coffin, Geo. H.....	465	Do.
Duelser, Jos.....	466	Do.
Dunn, Wm. L.....	474	Do.
Evans, Mrs. Francis A.....	461	Do.
Gimmlil, Louis C.....	481	Do.
Hayhurst, Laura.....	480	Do.
Kalez, Martin J.....	460	Do.
Loomis, Adnah I.....	490	Do.
Ludwig, Carrie.....	472	Do.
Martin, Samuel L.....	475	Do.
Moor, Arthur H.....	497	Do.
Mudgett, Geo.....	462	Do.
Mueller, Pauline.....	407	Do.
Mueller, Godfred H.....	482	Do.
Murphy, Jos. M.....	403	Do.
Palmer, Grant.....	488	Do.
Peck, Milton L.....	468	Do.
Peters, Lincoln M.....	477	Do.
Peterson, Cristina.....	476	Do.
Peterson, Lawrence.....	470	Do.
Sengfelder, Fred.....	471	Do.
Sengfelder, John.....	473	Do.
Wolferman, Geo. J.....	495	Do.
Wolferman, Martin.....	404	Do.
McIntyre, Mrs. Mabel B.....	196	Chezum, S. C.
Murphy, T. Waldo.....	197	Do.
Watson, Frank.....	198	Do.
Burdrige, Fred.....	191	Cunningham, C.
Campbell, A. B.....	161	Do.
Cunningham, Jno. G.....	175	Do.
Doneen, Michael.....	163	Do.
Finch, Jno. A.....	171	Do.
Jones, Arthur D.....	183	Do.
Mason, Fred H.....	185	Do.
Neal, Jos. H.....	182	Do.
Neal, Reginald K.....	186	Do.
Riblett, Byron C.....	167	Do.
Sweeney, Chas.....	165	Do.
Baty, T. J.....	521	Thurston, L. A.
Laberee, O. G.....	372	Watson, Frank.
Laberee, R. J.....	374	Do.
Moore, Harvey S.....	369	Do.
Strickland, Item.....	376	Do.

The following addresses are in different parts of the State of Washington:

Applicant.	D. S.	Agent.	Address.
Robinson, Knight.....	486	Doughton, C. H.....	Deer Park, Wash.
Chezum, F. O.....	195	Chezum, S. C.....	Pierce Co., Wash.
Chezum, L. E.....	149	.....do.....	Tacoma, Wash.
Baker, W. W.....	173	Cunningham, C.....	Walla Walla, Wash.
Clark, Jas. F.....	26	(?)	Challam, Wash.
Collins, H. W.....	164	Cunningham, C.....	Rockford, Wash.
Dahlgren, Walfred.....	120	(?)	Wilsoncreek, Wash.
Davidson, Fred C.....	166	Cunningham, C.....	Oaksdale, Wash.
Doyle, Miles.....	19	(?)	Sidney, Wash.
Halsed, Geo. S.....	25	(?)	Tacoma, Wash.
Doyle, Patrick.....	13	(?)	Sidney, Wash.
Leed, B. F.....	103	Green, M. A.....	Lakeside, Wash.
Leed, Belle.....	101	.....do.....	Do.
Leeper, Leon D.....	23	(?)	Ballard, Wash.
Lindsley, A. L.....	188	Young, J. R.....	Bridgefield.
Long, Dars.....	484	Doughton, C. H.....	Deer Park, Wash.
Marierson, Michael L.....	218	Christopher, C.....	Grand Mound, Wash.
Miller, Matt.....	15	(?)	Ballard, Wash.
Moore, Frank A.....	176	Cunningham, C.....	Walla Walla, Wash.
Moore, Miles C.....	172	.....do.....	Do.
Morrow, M.....	85	Green, M. A.....	North Bend, Wash.
Patterson, Milo.....	485	Doughton, C. H.....	Plaza, Wash.
Peters, Jas.....	21	(?)	Reedville, Wash.
Rothwell, Wm.....	6	(?)	Tacoma, Wash.
Rouse, Alvin G.....	31	(?)	Ballard, Wash.
Smith, Minnie V.....	350	(?)	Kettle Falls.
Swanson, Swan.....	119	Feed, Torger A.....	Ballard, Wash.
Willoughby, Adeline C.....	515	Willoughby, O. L.....	735 Wilbert street, Port Townsend, Wash.
Willoughby, F. A.....	513	.....do.....	Do.
Willoughby, Jos. K.....	8	.....do.....	Do.
Willoughby, Sarah C.....	514	.....do.....	Do.
Cable, Harry E.....	390	Foster, R. A.....	1068 Washington street, Oakland, Cal.
Christopher, Thomas.....	228	Christopher, C.....	San Diego, Cal.
Thurston, A. L.....	522	Thurston, L. A.....	Los Angeles, Cal.
Poston, N.....	124	Young, J. R.....	San Francisco, Cal.
Christopher, E. A. D.....	222	Christopher, C.....	Los Angeles, Cal.
Fairchild, Emily C.....	393	Foster, R. A.....	1068 Washington street, Oakland, Cal.
Fairchild, Geo. F.....	349	.....do.....	Do.
Foster, Katherine L.....	394	.....do.....	707 West Twenty-eighth street, Los Angeles, Cal.
Foster, Mary R.....	392	.....do.....	Do.
Robinson, M. L.....	386	.....do.....	1068 Washington street, Oakland, Cal.
Roessner, Henry W.....	395	.....do.....	Do.
Smith, Ella W.....	388	.....do.....	Los Angeles, Cal.
Wells, Edwin M.....	220	Christopher, C.....	Oakland, Cal.
White, R. A.....	104	Green, M. A.....	Los Angeles, Cal.
White, Carrie.....	82	.....do.....	Do.
White, Mrs. Anna.....	106	.....do.....	Do.
Thompson, Georgiana.....	108	.....do.....	Do.
Scotfield, Andrew L.....	157	Cunningham, C.....	1044 West Forty-fifth street, Los Angeles, Cal.
Jones, Minerva F.....	457	Green, M. A.....	Pasadena, Cal.
Goodwin, W. L.....	444	.....do.....	Los Angeles, Cal.
Barber, R. S.....	259	Stracy, A. H.....	San Jose, Santa Clara County, Cal.
Barber, E. L.....	240	.....do.....	Do.
Alisky, Lucille.....	366	Green.....	Santa Cruz.
Alisky, Chas.....	365	.....do.....	Do.
Dickerson, Addie M.....	453	Dickerman, A. E.....	Winsted, Conn.
Dickerson, Frank A.....	452	.....do.....	Do.
Dickerson, Nancy M.....	450	.....do.....	Do.
Mayher, Josephine C.....	499	Green, M. A.....	Bridgeport, Conn.
Wyman, Walter.....	454	.....do.....	Washington, D. C.
Wyman, Arthur.....	459	.....do.....	Do.
McIlhorne, Arthur J.....	455	.....do.....	Do.
Powell, Jno. H.....	456	.....do.....	Do.
Capp, Frank N.....	384	Foster, R. A.....	362 East Fifty-fifth street, Chicago.
Deulour, Frank D.....	407	.....do.....	R. 1105-119 Monroe street, Chicago.
Haeden, Thos. M.....	382	.....do.....	5752 Madison avenue, Chicago.
Howard, N.....	402	.....do.....	R. 1105-119 Monroe street, Chicago, Ill.
Hyde, Arvene S.....	385	.....do.....	4204 Oakenwald avenue, Chicago.
Jones, Rich. E.....	387	.....do.....	126 Winthrop street, Chicago.
Kelly, Fred T.....	152	Chezum, S. C.....	Chicago or Baker City, Ill.
Leyans, Fred B.....	396	Foster, R. A.....	61 Plymouth street, Chicago.
McCready, H. A.....	391	.....do.....	5919 Wabash avenue, Chicago.
McFarlane, F. L.....	401	.....do.....	362 East Fifty-seventh street, Chicago.
Maxwell, Frank S.....	381	.....do.....	4058 Ridge avenue, Chicago.
Moore, Levering.....	405	.....do.....	R. 1105-119 Monroe street, Chicago.
Poole, Wm. H.....	400	.....do.....	61 Plymouth street, Chicago.
Nolan, P. M.....	406	.....do.....	R. 1105-119 Monroe street, Chicago.
Rundell, Miller H.....	404	.....do.....	Do.
Root, F. J.....	390	.....do.....	Do.
Shaw, Jos. J.....	383	.....do.....	32 Walton place, Chicago.
Skinner, Harvey E.....	408	.....do.....	R. 1105-119 Monroe street, Chicago.
Shoemaker, Chas. W.....	403	.....do.....	387 West Twenty-third place, Chicago.

Applicant.	D. S.	Agent.	Address.
Trumbull, Chas.....	396	Foster, R. A.....	R. 1105-119 Monroe street, Chicago.
Thomas, Burton.....	397	do.....	Do.
Appleton, H. M.....	217	Christopher.....	Amboy, Ill.
Bedlent, Sarah E.....	231	do.....	Sublette, Ill.
Christopher, Geo. W.....	230	do.....	Amboy, Ill.
Wright, H.....	323	Watson, Frank.....	Chicago, Ill.
Wood, Chas. B.....	335	do.....	Do.
Wallenberg, H.....	298	do.....	Do.
Wandtke, Walter F.....	338	do.....	Do.
Walters, L. C.....	318	do.....	Do.
Vivian, E. H.....	286	do.....	Do.
Ver Mehr, Jno. M.....	373	do.....	Do.
Tuthill, Lois W.....	324	do.....	Do.
Turpink, E. A.....	287	do.....	Do.
Tromell, Ernest H.....	317	do.....	Do.
Thompson, F. R.....	294	do.....	Do.
Thompson, F. L.....	294	do.....	Do.
Thompson, C. E.....	289	do.....	Do.
Spurr, B. H.....	328	do.....	Do.
Seward, J. F.....	315	do.....	Do.
Seward, Geo. M.....	336	do.....	Do.
Schultz, R. C.....	326	do.....	Do.
Randall, E. M.....	276	Green, M. A.....	Do.
Peterson, L. W.....	325	Watson, Frank.....	Do.
Oakley, Horace S.....	291	do.....	Do.
Noe, Elzer C.....	410	do.....	Do.
Naumes, J. P.....	288	do.....	Do.
Musson, Harry.....	337	do.....	Do.
Munroe, Fayette S.....	332	do.....	Do.
Mullen, Arthur J.....	292	do.....	Do.
Miller, Geo. W.....	334	do.....	Do.
Merillies, F. C.....	320	do.....	Do.
Merillies, C. M.....	290	do.....	Do.
McCabe, Jos. E.....	329	do.....	Do.
Knight, F. C.....	319	do.....	Do.
Kinahan, Reverend.....	322	do.....	Do.
Kilman, W. A.....	296	do.....	Do.
Just, Frank H.....	295	do.....	Do.
Hartline, Willis A.....	351	Hartline, Jno. W.....	Anna, Ill.
Hartline, Jasper L.....	380	do.....	Do.
Hartline, Homer G.....	445	do.....	Do.
Hartline, E. Ella.....	351	do.....	Do.
Hartline, C. W.....	377	do.....	Do.
Hartline, Benj. F.....	378	do.....	Do.
Griffin, Wm. V.....	411	Watson, Frank.....	Chicago, Ill.
Geraghty, K. L.....	342	do.....	Do.
Gall, E. S.....	295	do.....	Do.
Frost, A. C.....	412	do.....	Do.
Frommel, E. H.....	317	do.....	Do.
Findley, H. M.....	316	do.....	Do.
Drum, A. L.....	333	do.....	Do.
Drake, Leo.....	330	do.....	Do.
Des Jardines, F. L.....	339	do.....	Do.
Davidson, S. H.....	321	do.....	Do.
Davison, A. Allen.....	311	do.....	Do.
Cook, Wm. C.....	293	do.....	Do.
Coale, Henry K.....	340	do.....	Do.
Casper, Oscar H.....	379	Hartline, Jno. W.....	Anna, Ill.
Arnold, Blon J.....	300	Watson, Frank.....	Chicago, Ill.
Allen, Fred H.....	327	do.....	Do.
Scott, Lee.....	438	do.....	Do.
Richey, Webster S.....	441	do.....	Do.
Jewett, Fred E.....	415	do.....	Do.
Hoy, E. R.....	297	do.....	Do.
Hageman, M. L.....	439	do.....	Do.
Doran, M. A.....	442	do.....	Do.
Clark, Lewis A.....	410	do.....	Do.
Burt, Frank E.....	414	do.....	Do.
Bingham, A. L.....	417	do.....	Do.
Ball, W. C.....	443	do.....	Do.
Ball, Geo. A.....	299	do.....	Do.
Thurston, E. E.....	523	Thurston, L. A.....	Union, Me.
Shoemaker, Jennie.....	226	Christopher, C.....	Adrian, Mich.
Fitzgerald, Joseph.....	413	Watson, Frank.....	Minneapolis, Minn.
Lincoln, Chas. F.....	440	do.....	Hennepin Co., Minn.
Asbjornson, Elsie.....	121	Torger, Fred A.....	Alpena, Mich.
Dougherty, Chas.....	161	Chezum, S. C.....	Goldfield, Nev.
Dickerman, Eliz. R.....	451	Dickerman, E. A.....	Horsehead, N. Y.
Jordan, Walter R.....	409	Foster, R. A.....	No. 11 Broadway, New York, the Apex Equip- ment Co.
Wick, Henry.....	179	Cunningham, C.....	Elyria, Ohio.
Warner, W. H.....	153	do.....	Williamson Building, Cleveland, Ohio.
Miller, Wm. E.....	174	do.....	Elyria, Ohio.
Steel, Jno. A.....	3	do.....	Pittsburg, Pa.
Hartline, H. E.....	355	Hartline, J. W.....	Dallas, Tex.
Tiernan, A. K.....	132	Young, J. R.....	Salt Lake, Utah.

Applicant.	D. S.	Agent.	Address
Young, W. H.	189	Young, J. R.	Linden, W. Va.
Stracey, A. H.	27	do.	London, England.
Yeates, J. H.	261	Stracey, A. H.	Kitsap Co., Wash.
Gray, Chas. D.	11	(?)	(?)
Abernathy, W. S.	187	Green, M. A.	(?)
Tallefson, Lars.	143	(?)	(?)
Thurston, L. A.	145	(?)	(?)
Roust, Thomas.	191	(?)	(?)
Nowell, F. D.	114	(?)	(?)
MacDonald, D. L.	519	(?)	(?)
Lorentzon, Martin.	137	(?)	(?)
Jessen, A. F.	144	(?)	(?)
Johnson, Richard A.	56	Harkrader, Geo.	(?)
Hudson, N. R.	511	(?)	(?)
Hughes, E. H.	146	Chezum (?)	(?)
Garvey, Dan D.	345	(?)	(?)
Dickerman, A. E.	346	(?)	(?)
Des Rocher, O. F.	116	(?)	(?)
Davis, A. L.	147	Chezum (?)	(?)
Decker, Jay M.	155	Harkrader, Geo.	(?)
Cunningham, K. J.	344	Cunningham, C.	Wallace, Idaho.
White, Harry.	169	do.	Do.
Page, Alfred.	184	do.	Wardner, Idaho.
Moore, Fred Cushing	168	do.	Wallace, Idaho.
Jones, Orville D.	154	do.	Do.
Johnson, Frank F.	178	do.	Do.
Jenkins, Francis.	155	do.	Moscow, Idaho.
Cunningham, C.	156	do.	Wallace, Idaho.
Battling, Will H.	170	do.	Do.
Morrison, H. J.	91	Green, M. A.	561 Hoyt street, Portland.
Cornellous, C. W.	129	Young, J. R.	718 Wayne street, Portland.
Hurlbut, W. H.	130	do.	Portland.
Lindsley, A. A.	127	do.	Do.
Lindsley, C. T.	128	do.	Do.
Bruneau, C. T.	201	Christopher, C.	Do.
Alisky, C. A.	109	Green, M. A.	251 Washington street, Portland.
Alisky, C. F.	259	do.	Do.
Brown, D. H.	281	do.	104 Fourth street, Portland.
Cartwright, C. M.	363	do.	Room 506 McKay Building, Portland.
Crosman, A. B.	83	do.	215 Seventh street, Portland.
Crosman, L. M.	105	do.	Room 506 McKay Building, Portland.
Donohoe, C. R.	360	do.	Portland, Oreg.
Donohoe, H. W.	458	do.	Do.
Donohoe, S. T.	356	do.	Portland, Oreg.
Hammond, I. B.	90	do.	128 Grand avenue, Portland.
Lindsley, M. P.	277	do.	Portland.
McFarland, E. B.	236	do.	506 McKay Building, Portland.
McFarland, M. E.	357	do.	Do.
Metschan, Phil.	99	do.	Imperial Hotel, Portland.
Morrow, F. A.	112	do.	Wamic, Oreg.
Pittcock, H. L.	284	do.	Oregonian Building, Portland.
Prescott, C. H.	102	do.	Portland, Oreg.
Schmeer, Fred.	362	do.	Pendleton, Oreg.
Watson, Mrs. J. F.	110	do.	Portland, Oreg.
Weidler, Geo. W.	278	do.	616 Lovejoy street, Portland.
Woodard, C. H.	280	do.	Portland, Oreg.
Barber, S. J.	446	Rathbone, E. J.	Do.
House, E.	448	do.	Portland, 138 Fourth street.
Mack, J. G.	449	do.	Portland, 83 Third street.
Rogers, J. R.	447	do.	Portland, 90 First street.
Clark, Lewis G.	503	Willoughby, C. L.	Portland, Oreg.
Eshleman, J. F.	502	do.	Do.
Grant, H. N.	505	do.	Portland, 228 Chamber of Commerce.
Kopf, Chas. H.	504	do.	Portland, Oreg.
Mason, A. B.	506	do.	Fourth and Morrison, Portland.
Page, F. H.	500	do.	120 Front street, Portland.
Stanley, F. G.	501	do.	801 Chamber of Commerce, Portland.
Booth, Henry B.	29	(?)	Grants Pass, Oreg.
Hartline, E. F.	354	Hartline, J. W.	Rossland, Kootenai Co., British Columbia.
Anderson, Robt.	352	do.	Do.
Blair, Joseph.	424	Simonds, Geo.	Seattle, Wash.
Blonger, S. R.	419	do.	Seattle, First avenue, corner Hames.
Brooke, Frank.	304	do.	Seattle, Wash.
Brown, B. S.	429	do.	Seattle, 518 Pike street.
Cosgrove, Ed.	436	do.	Seattle, Wash.
Cox, Fred R.	437	do.	Do.
Deaver, Jas.	306	do.	Do.
Devere, Wm.	425	do.	Do.
Dunlap, Jas. W.	312	do.	Seattle, 1023 Union street.
Edwards, Alfred.	311	do.	Seattle, 560 John street.
Fredlund, Jos. E.	422	do.	Seattle, 713 Twenty-seventh street.
Gates, Oldham.	430	do.	Seattle, 118 Fourth avenue.
Gibson, H. E.	302	do.	Seattle, Wash.
Guy, G. O.	307	do.	Do.
Hartig, Geo.	301	do.	Do.
Henderson, Thos. M.		do.	Do.

Applicant.	D. S.	Agent.	Address.
Hunt, Dubar.....	308	Simmonds, Geo.....	Seattle, Wash.
Kimball, F. D.....	435	do.....	Do.
Kroger, F. B.....	426	do.....	Do.
Landon, W. J.....	432	do.....	Do.
McKenzie, C. D.....	431	do.....	Do.
Malone, E.....	428	do.....	Do.
Morristette, L. N.....	310	do.....	Do.
O'Brien, Jas. S.....	434	do.....	Do.
Penny, L. W.....	420	do.....	Do.
Phillips, Fred. R.....	309	do.....	Do.
Praet, Harry A.....	433	do.....	Do.
Reardon, P. J.....	303	do.....	Do.
Runnels, H. B.....	418	do.....	Do.
Schoonover, L. D.....	427	do.....	Do.
Smith, Geo. F.....	423	do.....	Do.
Tearney, Jas.....	421	do.....	Do.
Walsh, Wm. M.....	305	do.....	Do.
Brook, Wm. J.....	227	Christopher, C.....	Do.
Brook, L.....	216	do.....	Do.
Dinius, Lillian.....	203	do.....	Seattle, Wash., 1717 Belmont avenue.
Dugdell, Harry.....	235	do.....	Seattle, Wash.
Hartman, J. I.....	214	do.....	Do.
Letcher, W. N.....	239	do.....	Do.
Morrill, H. G.....	215	do.....	Do.
Noll, J. B.....	211	do.....	Do.
Reiter, J. W.....	202	do.....	Do.
Seagrove, A. A.....	209	do.....	Do.
Seagrove, M. A.....	210	do.....	Do.
Shaffer, J. C.....	240	do.....	Do.
Simmonds, A. B.....	204	do.....	Do.
Simmonds, B. P.....	205	do.....	Do.
Simmonds, Geo.....	206	do.....	Do.
Simmonds, H. J.....	207	do.....	Do.
Simmonds, Harriet.....	208	do.....	Do.
Weeks, Cecil.....	213	do.....	Do.
Weeks, E. D.....	212	do.....	Do.
Bassett, E. A.....	30	(?)	Do.
Bryant, C. A.....	512	(?)	Do.
Clark, Arthur.....	35	(?)	Do.
Breitenstein, T. C.....	14	(?)	Do.
Bredenburg, Albin.....	117	(?)	Do.
Hesse, Udo.....	9	(?)	Do.
Struthers, F.....	24	(?)	Seattle, Wash.
Sammels, Geo.....	10	(?)	Do.
Runnels, A. F.....	518	(?)	Do.
Redly, John.....	32	(?)	Do.
Prenatt, A.....	34	(?)	Do.
Munday, F. K.....	343	(?)	Do.
Mahoney, R. O.....	47	(?)	Do.
Hunt, A. B.....	42	(?)	Do.
Hirth, J. L.....	20	(?)	Do.
Henry, H. C.....	159	Cunningham, C.....	Seattle, Halley Building.
Smith, Chas. J.....	160	do.....	Do.
Nelson, N. B.....	158	do.....	Do.
Moore, Walter B.....	162	do.....	Do.
Cole, I. L.....	150	Chezum, S. C.....	Do.
Holck, Ole M.....	507	Feed, Torger A.....	Do.
Harper, F. C.....	87	Green, M. A.....	Do.
Hamlin, Sarah N.....	279	do.....	Do.
Hamlin, P. D.....	113	do.....	Do.
Griffin, O.....	84	do.....	Do.
Green, M. A.....	89	(?)	Seattle, Alaska Building.
Green, Cora.....	358	Green, M. A.....	Do.
Chilberg, J. E.....	59	do.....	Do.
Chilberg, A. M.....	97	do.....	Do.
Campbell, S. M.....	282	do.....	Seattle, Wash.
Brawley, A. F.....	107	do.....	Do.
Allen, Watson.....	98	do.....	Do.
Abernathy, W. A.....	125	do.....	Do.
White, J. H.....	60	do.....	Do.
White, G. W. H.....	62	do.....	Do.
Wheeler, Dannie T.....	364	do.....	Do.
Wallace, John.....	111	do.....	Do.
Turner, Lester.....	283	do.....	Do.
Tottem, B. T.....	94	do.....	Do.
Tottem, A. M.....	92	do.....	Do.
Simlson, J. R.....	95	do.....	Do.
Runkel, P. L.....	96	do.....	Do.
Rinehart, W. V.....	61	do.....	Seattle, Alaska Building.
Reyburn, H.....	88	do.....	Do.
Mertens, G. W.....	361	do.....	Do.
Kinnear, R.....	93	do.....	Do.
Hollenbeck, H. O.....	58	do.....	Do.
Kinnear, Chas.....	100	do.....	Do.
Harrimann, H. R.....	39	Hunt, A. B.....	Do.
Davis, Clark.....	45	do.....	Do.

Applicant.	D. S.	Agent.	Address.
Davis, Cleo.....	520	Hunt, A. B.....	Seattle, Alaska Building.
Davis, Chas. W.....	41	do.....	Do.
Cottrell, G. F.....	44	do.....	Do.
Behrens, A.....	40	do.....	Do.
Schram, John.....	46	do.....	Do.
Sautter, Otto E.....	38	do.....	Do.
Mosley, J. L.....	37	do.....	Do.
Lippy, T. S.....	43	do.....	Do.
Lydon, T. J.....	235	Metcher, W. N.....	Seattle, Wash., Alaska Building.
Lydon, A. J.....	234	do.....	Seattle, Wash.
Felitz, Fred.....	237	do.....	Seattle, Wash., 2019 Sixth avenue.
Runnels, Annie E.....	516	Runnels, A. F.....	Seattle, Wash.
Felitz, Fred.....	236	Metcher, W. N.....	Do.
Runnels, Annie.....	517	Runnels, A. F.....	Do.
Heney, P. A.....	246	Stracey, C. A.....	Do.
Heney, M. J.....	247	Stracey, A. H.....	Do.
Hamilton, J. M.....	269	do.....	Do.
Hamilton, Almira.....	254	do.....	Do.
Haller, L. W.....	268	do.....	Do.
Gottstein, Wm.....	252	do.....	Do.
Gardner, J. D.....	258	do.....	Seattle, Wash., 1006 Washington.
Fulton, W. S.....	261	do.....	Seattle, Wash., 305 Mutual Life Building.
Fry, Izora V.....	266	do.....	Seattle, Wash., R.
Fry, A. C.....	264	do.....	Seattle, Wash., 606 West avenue.
Emmens, Stacy B.....	274	do.....	Seattle, Wash.
Davison, S. R.....	273	do.....	Do.
Cox, R. S., jr.....	271	do.....	Do.
Conway J. P.....	249	do.....	Do.
Cohen, A. L.....	244	do.....	Seattle, Wash., 302 Sixteenth avenue.
Calhoun, Scott.....	242	do.....	Seattle, Wash., 719 Second avenue.
Calhoun, Grant.....	275	do.....	Seattle, Wash., 1422 East Denny way.
Baxter, Fred H.....	266	do.....	Seattle, Wash., 1104 First avenue East.
Wight, M. F.....	248	do.....	Seattle, Wash.
Trowbridge, K. F.....	270	do.....	Do.
Stuver, J. M.....	265	do.....	Do.
Stuver, Chas.....	262	do.....	Do.
Siegley, Mabel A.....	263	do.....	Do.
Siegley, E. E.....	138	Shiels, Archie W.....	Do.
Rice, A. M.....	267	Stracey, A. E.....	Seattle, Wash., or North Yakima, Wash.
Ratchliffe, E. M.....	243	do.....	Seattle, Wash.
Purdy, P. A.....	272	do.....	Do.
Miller, A. C.....	257	do.....	Do.
Middaugh, H.....	245	do.....	Do.
Loghary, J. B.....	255	do.....	Do.
Johnston, W. R.....	241	Stracey, A. H.....	Do.
Johnston, R. C.....	253	do.....	Do.
Hill, Homer M.....	250	do.....	Do.
Foot, Oscar.....	194	Wardwill, James.....	Seattle, Wash., "The Otis" Apartments.
Foot, E. E.....	193	do.....	Seattle, Wash.
Hughes, John.....	508	White, D. H.....	Do.
Hughes, D. H.....	510	(?).....	Do.
Hughes, A. E.....	509	White, D. H.....	Do.
Prink, J. M.....	190	Young, J. R.....	Seattle, Wash., Washington Hotel Annex.
Campbell, John.....	183	do.....	Do.
Burke, Matilda.....	139	do.....	Seattle, Wash.
Campbell, John.....	124	do.....	Do.
Blethen, A. J.....	141	do.....	Do.
Young, J. R.....	367	(?).....	Seattle, Wash., 234 Pioneer Building.
Williams, B. L.....	142	Young, J. R.....	Seattle, Wash.
Pearce, W. E.....	126	do.....	Seattle, Wash., 408 Wall street.
Moran, Robt.....	140	do.....	Seattle, Wash.
MacDougall, J. B.....	131	do.....	Do.
Love, Mand.....	388	do.....	Linden, Va.
Brooks, E. J.....	77	Smith, N. E.....	Juneau, Alaska.
Back, A. D.....	75	do.....	Do.
Caro, J. B.....	78	do.....	Do.
Casey, W. W.....	76	do.....	Do.
Diggs, Joe.....	74	do.....	Do.
Gilmir, P. J.....	80	do.....	Do.
Goldstein, Chas.....	70	do.....	Do.
McNaughton, Guy.....	68	do.....	Do.
McCloskey, John.....	67	do.....	Do.
McBride, J. C.....	63	do.....	Do.
McCloskey, Jas.....	79	do.....	Do.
McGrath, C. M.....	66	do.....	Do.
Malone, Harry.....	66	do.....	Do.
Marle, E. J.....	81	do.....	Do.
Mullen, Anna P.....	73	do.....	Do.
Raymond, R. J.....	65	do.....	Do.
Saunders, Robt. M.....	115	do.....	Do.
Saunders.....	69	do.....	Do.
Woodruff, T. G.....	71	do.....	Do.
Rathbone, E. J.....	371	(?).....	Catalina, Alaska.
Powers, M. J.....	232	(?).....	Do.

Applicant.	D. S.	Agent.	Address.
Hamilton, J. T.	23	(?)	Catalla, Alaska.
Cunningham, G. R.	348	(?)	Do.
Reynolds, Jas. A.	5	(?)	Do.
Chesum, S. C.	14	(?)	Do.
Cary, Frank	200	Christopher, C.	Do.
Calhoun, J. J.	57	Harkrader, Geo.	Do.
Britton, C. O.	370	Willoughby, O. L.	Do.
Wilson, Clarence P.	219	Christopher, C.	Do.
Smith, N. E.	64	(?)	Tannakke, Alaska.
Hubbell, Chas. S.	314	Simmonds, Geo.	Wrangell, Alaska.
Harkrader, Geo.	54	(?)	Juneau, Alaska.
Broughton, Geo. F.	347	Diekerman, A. R.	Do.
White, D. L.	51	(?)	Katalla, Alaska.
Wardell, Jas.	192	(?)	Do.
Stewart, F. H.	199	(?)	Do.
Smith, New. H.	50	(?)	Kayak, Alaska.
Shiels, Archie W.	135	(?)	Katalla, Alaska.
Peterson, Peter L.	123	(?)	Do.
Olds, L. A.	341	Wardell, Jas.	Juneau, Alaska.
Odynski, Wm.	12	(?)	Kayak, Alaska.
Nichols, J. H.	1	(?)	Katalla or Kayak, Alaska.
Mullen, Ignatius.	180	(?)	Kayak, Alaska.
Muerer, Jacob.	17	(?)	Do.
Lind, Fred.	122	Feed, Torger A.	Home or Katalla, Alaska
Kontrosh, Jos.	4	do.	Kayak, Alaska.
Jones, Wm.	18	(?)	Do.
Gylan, John.	2	(?)	Do.
Holland, Lars.	36	(?)	Do.
Hartline, J. W.	349	(?)	Do.
Harris, Well. S.	375	Waroon, Frank.	Knik, Alaska.
Greer, Thos.	53	(?)	Katalla, Alaska.
Greer, Chas.	22	(?)	Kayak, Alaska.
Ackles, Frank.	16	(?)	Katalla or Kayak, Alaska.
Feed, Torger A.	118	(?)	Do.
Feater, Henry.	48	(?)	Do.
Edkins, Walter.	52	(?)	Do.
Davison, J. C.	28	(?)	Kayak, Alaska.
Comner, Chas.	49	(?)	Katalla, Alaska.

FINIS.

In addition to the list of applicants sent me by your office, June 21, 1907, I have added about 120 names that I found of record at Juneau, Alaska.

From the talk of different attorneys and individuals interested in the Alaska coal lands, I feel that the disposal of the lands all tends toward one direction, and that is the Guggenheim companies. The papers here in Portland, Oreg., are full of the news that the Guggenheims are constructing railroads near Katalla, Alaska, for the purpose of taking out the oil, minerals, etc., and there is an advertisement in the said papers for the employment of 2,000 men to go to Katalla, Alaska, and work for the Guggenheims.

On the eve of my departure from Seattle, Wash., I met M. A. Green, one of the agents handling a large body of coal lands in Alaska. Green said that he had put considerable money into the lands located by C. H. Doughten, and that Doughten was going to sell most, if not all, of the claims located by individuals to individuals. This may be true that the law allows an individual to make an assignment of his claim, but it does not allow one man to locate 40 or 50 claims for as many people and advance the money for the development and improvements of the land for the sole purpose of selling the claims at an advance. I do not believe that there is any rule of the General Land Office or of the Department of the Interior that allows a man to traffic in the public lands of the United States by getting others to loan their names in order to advance the personal interests of the agents.

I would therefore again recommend that these entries be carefully investigated by an experienced and fearless agent.

Very respectfully,

HORACE TILLARD JONES,
Special Agent, General Land Office.

DEPARTMENT OF INTERIOR, GENERAL LAND OFFICE,
Portland, Oreg., November 12, 1907.COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By your wire dated October 28, 1907, you directed me to proceed to Seattle and investigate the protests filed by W. M. Bruner and P. J. Erussard, both of said protests affecting the sufficiency of soldier's additional application No. 69, made February 20, 1906, by Charles Davis, of Seattle, Wash., as assignee of George Bell, at Juneau, Alaska. The protest of Bruner also states that—

"It is a matter of common report and alleged knowledge that Special Agent Love, of the Land Department, is the owner of one or more of said lots, and is holding the same either in his own name or that of his wife; hence he is interested party and not competent to make an unbiased report on a protest filed against said entry."

I have the honor to report that on October 29, 1907, I proceeded to Seattle and investigated the case as far as possible in that city. I interviewed Charles D. Davis, son of Clark Davis, and secured his affidavit, a copy of which is hereto attached. I also interviewed W. G. Rogers and Walter French. They all speak in the highest terms of Special Agent Love, and from what they state I am of the opinion that the insinuations made against the said soldier's additional application can not be sustained by the facts. I presented the said protests to the United States attorney, who is of the opinion that prosecution under amended Revised Statute, 4746, could not be maintained against Bruner, since his charges are based upon "common report and alleged knowledge." (Paragraph 5 of his protest.)

The charges against the sufficiency of the application should be investigated by a special agent upon the ground. While the affidavits hereto attached would indicate that the protests are unfounded and are false, still the persons making said affidavits are vitally interested in the case.

Further investigation can not be made in the States. The papers transmitted by you in your letter to Special Agent Higby, dated September 30, 1907, are herewith returned.

Mr. H. R. Harriman, attorney for Clark Davis, was absent at the time of my visit to Seattle, and from letters received from him I find that he has no information in the premises.

In investigating this case I find that Clark Davis and his associates are the owners of the Katalla Petroleum and Coal Company, who are endeavoring to secure large tracts of coal lands near Katalla, Alaska, and from my conversation with young Mr. Davis there can be no doubt that the company are endeavoring to acquire more coal land than they are entitled to under the law. At the time I endeavored to secure an affidavit from young Mr. Davis in regard to their coal claims, but he refused to make any, stating that during your visit to Seattle last summer the matter had been thoroughly explained to you and that you had advised them not to make any statement until charges had been made, in order that you would know what they had to meet. Mr. Davis had undoubtedly misquoted you in this respect, or they failed to give you all the facts in the case. I would therefore respectfully recommend that if it is desired that I further investigate these protests that I also be authorized to thoroughly investigate the coal-land filings and entries made by the said Clark Davis and his associates.

Very respectfully,

L. R. GLAVIS,
Chief of Field Division.

December 12, 1907, commission approved entry for patent without further investigation.

WASHINGTON, D. C., December 28, 1907.

Mr. LOUIS R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: While you were on duty in this office during the current month you were supplied with a complete copy of all papers, records, and files bearing upon the charges of irregularity in reference to the entry and acquisition of coal lands within the district of Alaska, and you were directed to take over the investigation of these alleged irregularities and take the action necessary in each instance to protect the interests of the Government in the Alaska land; and you were likewise directed to take up with the proper United States attorney the question of criminal proceedings against any parties liable under the law.

The original charges that coal lands were being illegally acquired in Alaska were made to Special Agent H. K. Love, and on June 21, 1907, Special Agent Horace T. Jones was directed to make the necessary investigations in these cases. The original letter to Mr. Jones (by him returned with his report) is hereto attached. You have already been supplied with copies of the reports made by Special Agents Love and Jones and of the report of Chief of Field Division Colter as to the operations of certain Chicago parties.

As soon as you deem it advisable you will notify Special Agent H. K. Love that you have been placed in charge of investigation of matters relating to Alaska coal lands, and that he will perform such services in regard to those cases as you may direct, reporting to you in the premises. In the meantime this office has directed Chief of Field Division Samuel T. Colter to visit Detroit, Mich., and there make an investigation of the facts and circumstances under which a large number of residents of that city made coal declaratory statements for Alaska coal lands. As soon as Mr. Colter's report is received the same will be forwarded to you.

You will, from time to time and as rapidly as possible, make separate reports upon individual entries, or separate groups of entries, to the end that action may be taken without further delay.

Respectfully,

R. A. BALLINGER, *Commissioner.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., October 7, 1908.

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: Herewith I inclose you copy of an original affidavit filed in this office by Clarence Cunningham, by him sworn to September 4, 1908, in the matter of certain Alaska coal interests.

Your investigation of these coal interests was temporarily deferred during the pendency of the last Congress in a bill to provide additional laws for acquiring title to Alaska coal land. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally make adverse report and ask for the cancellation of these entries.

This office has been informally advised that the various entrymen, known as the Cunningham group, have concluded to stand upon the old law and ask for a patent upon the now pending applications. The reports as made by you to this office show that these applications were fraudulent and should be canceled. Proceedings will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the Government's case in the hearing.

I am inclosing you a copy of a personal letter received in this office from Henry R. Harriman, with suggestion that said letter and a conference with Mr. Harriman may aid you in prosecuting your inquiries in reference to the Alaska coal situation.

Very respectfully,

H. H. SCHWARTZ,
Acting Assistant Commissioner.

[Telegram.]

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 6, 1909.

Special Agent GLAVIS,
Seattle, Wash.:

Wire names of different towns or cities in which you desire testimony to be taken in hearings in Cunningham group. This office will appoint a commissioner take testimony, you to present Government's case with such legal assistance as you may require. Answer at once.

CWN WU
Official business. Government rate.

SCHWARTZ,
Acting Assistant Commissioner.

[The Western Union Telegraph Company.]

1008 ch ho 45 Coll GR.

Dated Seattle Wn July 6.

To COMMISSIONER GNL. LAND OFFICE. W., D. C.:

Testimony must be taken at Seattle, Spokane, Walla Walla, Oakesdale, Rockford, in Washn.; Wallace, Moscow, Idaho; Cleveland, Elyria, Youngstown, Ohio; New York City, and Los Angeles. Govt's case would be much strengthened by awaiting result of investigations in Alaska.

GLAVIS, S. Agt.

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July —, 1909.

Mr. MURPHY:

The attached wire gives the towns in which Mr. Glavis desires testimony to be taken on behalf of the Government in the Cunningham group of Alaska coal cases. Very respectfully,

RSC

Acting Assistant Commissioner.

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 6, 1909.

Messrs. UNDERWOOD and MURPHY:

Please at once (to-day) advise the attorneys for the Cunningham group, resident attorneys if they have any, that this office is prepared to proceed to a hearing to determine the truth or falsity of the charges affecting the validity of these entries; that in order to expedite the hearing, and save expense and time, it is suggested that a written stipulation be entered into waiving action by the Alaska land office, and that this office appoint a commissioner to take the testimony, this testimony to be taken from place to place, where the witnesses reside. When all the evidence is in, the record is to be forwarded here for decision in the first instance; stipulation also to provide that defendants will accept service of charges from this office direct, the hearing to begin immediately.

CWN

H. H. SCHWARTZ,
Acting Assistant Commissioner.

JULY 7, 1909.

SPECIAL AGENT GLAVIS,
Seattle, Wash.

You are authorized to expend not to exceed \$300 in the purchase of the survey and other supplies mentioned in your telegram July 6. Geological Survey can not furnish suitable instruments.

SCHWARTZ,
Acting Assistant Commissioner.

"P" 38231 HLU

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 7, 1909.

Mr. CLARENCE CUNNINGHAM,
Seattle, Washington.

SIR: In the matter of the coal cash entry made by yourself, and also of the 32 other coal cash entries made by you as agent for various claimants enumerated hereafter, for lands lying in the Juneau, Alaska, land district, I have to advise you that this office is now prepared to proceed to the hearing in these cases on charges made against the same by a special agent of this office.

In order to expedite the matter of the hearings and to save time and expense, it is suggested that a written stipulation with the Government be entered into, both in your individual capacity and as attorney in fact for the other entrymen, waiving action in these cases by the Juneau, Alaska, land office, and that this office appoint a com-

missioner to take the testimony, this testimony to be taken at the various places where the different witnesses reside, that when all the evidence is in the record may be forwarded to this office for decision in the first instance.

It is also suggested that this stipulation provide that the various defendants will accept service of charges from this office direct, the hearings to begin immediately.

Will you kindly advise me at once if you are willing to enter into such a stipulation, in order that this matter may be expedited as much as possible?

The entries referred to are as follows:

Coal entry No. 1 (C. D. S. 157),	Andrew L. Scofield.
" " " 2 " " "	155, Francis Jenkins.
" " " 3 " " "	160, Charles J. Smith.
" " " 4 " " "	159, Horace C. Henry.
" " " 5 " " "	180, Ignatious Mullen.
" " " 6 " " "	169, Henry White.
" " " 7 " " "	164, Henry W. Collins.
" " " 8 " " "	166, Fred C. Davidson.
" " " 9 " " "	163, Michael Doneen.
" " " 10 " " "	178, Frank F. Johnson.
" " " 11 " " "	175, John G. Cunningham.
" " " 12 " " "	156, Clarence Cunningham.
" " " 13 " " "	161, A. B. Campbell.
" " " 14 " " "	179, Henry Wick.
" " " 15 " " "	177, Hugh B. Wick.
" " " 16 " " "	185, Fred H. Mason.
" " " 17 " " "	174, William E. Miller.
" " " 18 " " "	165, Charles Sweeney.
" " " 19 " " "	167, B. C. Ribbet.
" " " 20 " " "	168, Fred Cushing Moore.
" " " 21 " " "	184, Albert Page.
" " " 22 " " "	173, W. W. Baker.
" " " 23 " " "	181, Frederick Burbidge.
" " " 24 " " "	186, Reginald K. Neill.
" " " 25 " " "	182, Joseph H. Neill.
" " " 26 " " "	172, Miles C. Moore.
" " " 27 " " "	171, John A. Finch.
" " " 28 " " "	162, Walter B. Moore.
" " " 29 " " "	183, Arthur D. Jones.
" " " 30 " " "	154, Orville D. Jones.
" " " 31 " " "	153, W. H. Warner.
" " " 32 " " "	176, Frank A. Moore.
" " " 33 " " "	158, Nelson B. Nelson.

Very respectfully,

H. H. SCHWARTZ,
Acting Assistant Commissioner.

FRL

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Washington, July 8th, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: In compliance with your telegram of March 10th, calling for report as to status of investigation of Alaska coal entries, I submitted a report under date of March 23rd, 1909, in reference to the coal entries made by Clarence Cunningham as agent, and known as the "Cunningham group," which I ask to be considered with reports and evidence heretofore submitted.

The affidavit and evidence submitted in these several reports show that the coal declaratory statements in said group were filed subject to agreement that upon title being perfected to the individual claims, of one hundred and sixty acres each, the entrymen were to deed such claim to a company to be formed for the purpose of developing and marketing the coal, and receive stock in said company in payment, Cunningham, the agent in this case, to receive one-eighth of the stock issued to each entryman.

Upon the submission of this report, in compliance with telegram heretofore mentioned, I was advised by telegram, dated April 20th, that Alaska coal investigation

must be completed within sixty days, and under same date I advised you that this would be impossible, owing to the fact that snow covered the claims.

Special Agents Stoner and Andrew Kennedy will proceed to Alaska on July 16th, in order to make the necessary field examinations. They will also endeavor to procure additional evidence from persons residing in the vicinity of the claims. The necessity for such field examinations, showing that the claims have been worked with a view to the consolidation thereof, and of the mining and marketing of the coal for the benefit of the claimants with the intention to form a company, is perfectly apparent to you, since your office verbally instructed me in the past that such evidence would be very material, and would strengthen the Government's cases.

Since the submission of my report of March 23rd there has been no evidence secured in this group of entries, for the reason that the time allowed within which to make these investigations has been too short to complete the same, for the reason that there are one thousand claimants involved in this investigation, residing in all sections of the United States, parts of Canada, and Alaska.

In your telegram of June 30th you state that you will prepare notices of charges, but that I may submit a form for your consideration, and I therefore respectfully recommend that the following charges be contained in the notices:

First. That the coal declaratory statement was not made in good faith.

Second. That the said coal declaratory statement and entry was not made for the sole use and benefit of the entryman.

Third. That an understanding existed whereby persons other than the original claimants were to receive, directly or indirectly, an interest or benefit in the said land.

Fourth. That prior to filing the said coal declaratory statement the said entryman unlawfully conspired with his duly appointed agent, Clarence Cunningham, and with other persons, to defraud the United States, under the coal land laws and regulations relating to the district of Alaska, of its title to the lands embraced in said entry and of other lands adjacent thereto.

I respectfully recommend that the above notice of charges be served on each entryman involved in said group, as well as others interested, in accordance with the circular of November 25th, 1907. I wish to most urgently impress upon you the necessity of awaiting the completion of the investigations of this group before any proceedings are instituted with a view to the cancellation of the entry, since facts may develop which would enable us to make other charges. In addition to the evidence which will be secured by Agents Stoner and Kennedy in Alaska, I am very anxious that the claimants who have assigned their claims be interviewed in order to show the understanding which they had. I am also reliably informed that Clarence Cunningham had endeavored to interest others in these coal fields, and their evidence would show the representation made to them by Cunningham as being the same as that existing with the present entrymen.

While in Washington I was shown several letters written to the department by Miles C. Moore, and I respectfully recommend that I be furnished with certified copies of all such letters, as well as any other correspondence which may be on file in your office or in that of the department relative to this group of entries.

Respectfully,

(Signed) L. R. GLAVIS,
Chief of Field Division.

G. G. L. R. G.

[Telegram.]

P-HHS

JULY 13, 1909.

MILES C. MOORE, Walla Walla, Wash.:

July seven I wrote Clarence Cunningham, Seattle, Washington, suggesting Cunningham group of entrymen stipulate in hearing on special agent's charges to accept service charges from this office and waive action by Alaska local land office, commissioner or referee to be designated by this office to take testimony, and the record to go to General Land Office for decision in first instance. Am prepared to serve charges, appoint a commissioner, and proceed to taking of testimony at once, thus saving several months' time. If this stipulation is satisfactory, have it include further stipulation that all Cunningham cases may be consolidated and proceed as one case. Apparently Cunningham group have no attorneys of record with authority to make a stipulation. Wire answer.

H. H. SCHWARTZ,
Acting Assistant Commissioner.

WU Collect.

[The Western Union Telegraph Company.]

160 xh g 15 Paid.

WALLA WALLA, Wash., July 13.

SCHWARTZ,

Actg. Com. Gen. Land Ofs. Washn., D. C.:

Plan suggested satisfactory to me. Will advise Cunningham to arrange for acceptance by other entrymen.

MILES C. MOORE.

10 P. M.

[The Western Union Telegraph Company.]

1031PM.

1069 ch Jf Hg 15 Pd.

Received at Wyatt Building, cor. 14th and F streets, Washington, D. C., July 15, 1909.
Dated Wallace, Idaho, 15.

To HON. FRANK PIERCE,

1st Asst. Secy. of the Interior, Washn., D. C.:

What, if any, action has been taken regarding coal claims Cunningham & others in Alaska.

J. P. GRAY.

[Telegram.]

P-HHS

JULY 16, 1909.

Special Agent McENIRY, Denver, Colo.:

Direct Special Agent Sheridan proceed at once to Glavis and familiarize himself with Cunningham coal case and assist Glavis in taking testimony before commissioner to be appointed. Testimony will be taken from Seattle to New York.

SCHWARTZ,

Acting Assistant Commissioner.

CWN WU OBGR GLO

[The Western Union Telegraph Company (Incorporated).]

041

450

D V/60 CH D 66 Coll. Govt.

JULY 16, 1909—4.32 p. m.

SEATTLE, Wn., 16.

COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.:

Baji sixteenth have conferred with Secretary Interior. He suggests I wire you and ask if my report July eighth and telegram July sixth was considered before you sent telegram this date in view recommendations stated in reports above referred to. It will be difficult to comply with your telegram unless you desire hearing proceed without further investigation.

GLAVIS, Chief.

[Telegram.]

DEPARTMENT OF THE INTERIOR,

July 16, 1909.

To JOHN P. GRAY,

Wallace, Idaho:

Adverse report made against all Cunningham entries. Cunningham has been asked to enter into stipulation to take testimony before master to be submitted directly to Commissioner General Land Office for action. See Cunningham.

FRANK PIERCE,

First Assistant Secretary.

[Telegram.]

P-HHS

JULY 17, 1909.

Special Agent GLAVIS, *Seattle, Wash.:*

Your wire sixteenth, in reference your consultation with Secretary received. Instructions heretofore issued modified in view of your telegram sixth. Your report of eighth not at hand. Have this day wired Sheridan as follows: "Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agents or assistance necessary to bring case to prompt hearing and close." You will render Sheridan every assistance. Meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation cannot proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearings.

(Signed) SCHWARTZ.

WU OBGR-GLO.

[Telegram.]

P-HHS

(Ink): Sent.

JULY 17, 1909.

J. P. GRAY, *Wallace, Idaho:*

Your appearance not filed. Hence, on July 7 suggestion of stipulation to proceed to hearing was proposed to Cunningham, Seattle, and July twelfth like suggestion wired to Miles C. Moore, Walla Walla. Am awaiting stipulation of entrvmen to consent taking testimony before commissioner to be appointed by this office, waiving reference to Alaska land office, decision to be prepared here in first instance.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

GWN. WU OBGR GLO.

[Telegram.]

[Postal Telegraph commercial cables.]

[Received at Postal Telegraph Building, 1345 Penna. ave., Wash., D. C.]

400-Ny. Ru. 10. X. 8.48 pm.

SEATTLE, WN., *July 19-09.*

Acting Commissioner SCHWARTZ,

General Land Office, Washington, D. C.:

Letter indicated in message to Moore not received; please advise.

CLARENCE CUNNINGHAM.

(Pencil): Letter mailed July 7, 1909, to Seattle, Wash.

Address only the Commissioner of the General Land Office.

Special.

G L O

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 19, 1909.

P-HHS.

Mr. MURPHY: I desire to issue some instructions to Special Agent Sheridan. By wire Mr. Sheridan has been directed to take charge of the Cunningham cases.

In order to prepare my letter of instructions, it will be necessary for you to prepare, in chronological order, a brief summary of the action heretofore ordered by this office, looking to the investigation of these entries.

You will recall that, for a short time pending consideration of the scope and extent of the new coal-land act in Alaska, Glavis was directed to suspend his inquiries and devote his time to other important Oregon cases. I want particular reference to be made to the circumstances of that order; and, also, I want the date upon which I subsequently, as chief of the field service, directed Mr. Glavis to again proceed with

the Cunningham investigations and to follow out the line of his previous instructions and his own scope of investigation. Also attach to the memorandum Mr. Glavis's report of July 8, 1909—he says in a telegram that he submitted such a report.

Respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

OWN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 20, 1909.

MY DEAR SCHWARTZ: The worst situation on the line is the one I find here. Our friend, Glavis. He regarded me with suspicion, and after talking awhile showed me your telegram assigning the coal cases to Sheridan. Said he supposed you were mad with him for talking the matter over with the Judge. Showed me his telegram to you. I talked further with him and found that he had wired to Shaw to ask Shaw to come out and assist him in these Cunningham cases, on the ground that the majority of the cases were for claims within the forest reserves in Alaska, and that Shaw had wired back that he, Shaw, was too busy and could not come, owing to the absence of Wells. I perceived that the date of this telegram was one day before the date of the telegram from you to him superseding Glavis and placing Cunningham in charge; I immediately told Glavis that this was the reason that you had wired placing Sheridan in charge; that while we liked Shaw we realized that he was the most energetic of the men in the Forestry, and that he had for the past two years been doing little else than put up jobs to dispossess our boys of the work; I also found that the law officer of the Forestry at Portland was in consultation with Glavis and had been sent here by Shaw. Now I figure that Glavis is preparing to make a cushion for himself to fall back on, and also putting himself in shape to have a great story in case Sheridan does not make good and succeed in canceling the Cunningham cases; namely, that he plead for extra time; was refused; that a new man was placed in charge who knew nothing about the cases, thus throwing them; putting the onus on the Secretary and, I presume, myself, as being Seattle people. He also insists that he was refused Jones to help; that we took Doyle away from him; and, all told, while he looks innocently at me, yet I can see that his heart is bad, though why it should be I can not tell, except that he wanted to drag the cases out; he may be sincere, of course, in his idea that he has not been given time and opportunity. He asserts that he will help Sheridan all he can, but it is not human nature, or at least his human nature. The atmosphere is not good at all. That he is playing the Forestry there is no question; the innocent look he gave me when I told him that he was dragging in Shaw, etc., when there was no necessity was beautiful. "Why, that was directly in line with the Secretary's letter of March 2." He is also talking conservation very strongly. Glavis talking conservation! All round he is ugly, and he is preparing to be as unpleasant as he can, at least that is my solution of the situation. Now the only thing that I can see is for me to try to be back by the 15th, and then have you run out here to dig into the situation. Glavis prophesies the greatest friendship for you, and I think you know him better than anyone else, and this is certainly the worst situation we have. He will make about forty favorable and about five hundred unfavorable reports; the way things will commence to drop will be amusing. The Judge says: "It will all come out; Congress will have to come to the rescue." However, all the rescue that Congress gave before amounted to very little.

This is also the only spot in which there is any trouble about the new timber regulations. Kennedy has cruised as high as \$9,000 for a quarter. This looks to me as if the Forestry had Glavis pretty solidly.

Whether it would be well to modify the Sheridan instructions I can not as yet tell; will write you later. It may be all right to let things stay until you come; that you will have to come there is no question, for I think that you can get at the meat of the trouble here; it may be that I am arriving at wrong conclusions all down the line—so do not let this letter prejudice your mind.

Of course I do not wonder that he has to make adverse reports after the Attorney-General's opinion of the law; that is all right; but it is his attitude that is bothering me; it looks as if he were trying to dig pitfalls for his best friends. Write me what you think of the situation. Also write me as to whether Altizer has my itinerary; I will try and dig up my copy. In the meantime, I will be here until Sunday night; then to Portland for Monday. Leave there Tuesday for San Francisco, one day, and then Salt Lake; stay there one day, and leave the next for Cheyenne; how long there I do not know.

Best wishes.

Sincerely,

FRED DENNETT.

Address only the Commissioner of the General Land Office.
Cunningham group of coal entries.

In reply please refer to—P-H. H. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 31, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, General Land Office, Denver, Colorado.

SIR: October 6 and 17 and November 1, 1905, Special Agent H. K. Love addressed communications to this office setting forth various alleged schemes to secure the location of coal lands in Alaska, and asking for advice in the premises.

December 11, 1905, by letter of this office to Mr. Love, the coal-land laws were, as to certain features, considered, and Agent Love directed to make investigation to prevent fraudulent entries. Subsequent correspondence not material to this case passed between this office and Mr. Love.

June 21, 1907, this office addressed a letter to Special Agent Horace T. Jones, now located at Portland, Oregon, calling attention to agents' reports as to various schemes under which coal lands in Alaska were being entered and directions were therein given that—

"thorough, complete, and energetic investigation be made, and that from time to time preliminary reports be submitted."

September 24, 1907, Chief of Field Division S. J. Colter, Duluth, Minnesota, was directed to make investigations at Chicago, Illinois, affecting the Alaska cases, but it is not thought that any of these entries were included within the Cunningham group.

December 28, 1907, this office addressed a letter to Chief of Field Division Glavis, Portland, Oregon, calling his attention to the fact that during the time he was on duty in this office in December, 1907, he was supplied with a complete copy of all papers, records, and files bearing upon the charge of irregularity in reference to the entry and classification of coal lands within the district of Alaska. He was likewise directed to take over the investigation of these alleged irregularities and to take the action necessary in each instance to protect the interests of the Government, and also confer with the proper United States attorney in the matter of criminal proceedings against persons liable under the law. Direction was given that separate reports on individual entries be submitted from time to time as rapidly as possible in order that action might be taken in this office without delay.

January 4, 1908, upon report received from Special Agent Love, the Cunningham group of coal entries were clear listed and referred to Division N for action upon the papers and Chief of Field Division Glavis advised thereof. Mr. Glavis wired, protesting the clear listing of the entries in question; and, under date of January 23, 1908, the entries were withdrawn from the Mineral Division and again filed in the Special Service Division of this office.

February 5, 1908, Mr. Glavis was directed to complete investigation and make immediate report on Alaska claims.

March 28, 1908, Mr. Glavis was directed by telegram to wire date when reports would be received in this office.

October 7, 1908, in a letter from myself to Mr. Glavis, he was advised—

"Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been made of these particular interests. You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally make adverse report and ask for cancellation of these entries."

And he was further advised that the claimants in what is known as the Cunningham group had concluded to stand upon the old law and ask for a patent thereunder, and that action would be deferred here until his investigations could be completed.

March 10, 1909, Mr. Glavis was asked, by wire, to submit at once reports on the present status of investigation of Alaska coal entries, and in the reports to designate the entries in one of four classes, to wit: (1) Claims wherein present information suggests further investigation necessary; (2) claims wherein investigation and evidence warrants adverse proceedings at this time; (3) claims wherein investigation warrants proceedings to patent; and (4) claims wherein you have no information; and the expense of a stenographer for two weeks was authorized him to prepare the reports in question.

April 11, 1909, Mr. Glavis was requested, by wire, to advise this office when reports called for would be received.

Reports received from Mr. Glavis in reply to the above last request were incomplete—did not contain facts sufficient to warrant this office in proceeding.

April 20, 1909, this office advised Chief of Field Division Glavis, by wire, that the Alaska coal investigations must be completed within sixty days, and he was asked to state the number of agents he would require for that purpose. He was also otherwise given authority to send the agents into any jurisdiction, and these agents have, in fact, extended their investigations from New York City to Los Angeles.

May 24, 1909, this office forwarded a letter to Mr. Glavis enclosing copy of the Secretary's letter of May 19, 1909, to this office relative to coal-land entries, and directing that reports be made in accordance therewith.

June 29, 1909, telegram was sent to Mr. Glavis:

"Cunningham entrymen elect to stand on the old law. Immediate hearing will follow. Be prepared with evidence."

And on June 30, 1909, he was further advised to submit his report on the Cunningham group, and that notice of charges would be prepared in this office.

Mr. Glavis replied, and, among other things, requested the further retention of Special Agent Jones at Seattle, which request was directly contrary to explicit understanding had between himself and myself as to the date upon which Mr. Jones would be required to return to his work at Portland, Oregon, and as a consequence he was on June 30, 1909, advised that Mr. Jones had returned to Portland, but was subject to call on subpoena at any time necessary as a witness in the Cunningham group.

The matter of this Cunningham group was taken up expressly with Mr. Glavis by myself during my official visit to Seattle during the month of June, and it was at that time distinctly understood that reports upon the Cunningham group should be submitted July 1st to this office, which would be in accordance with information furnished by myself to the department some sixty days before, to the effect that reports in this case would be in hand by July 1st.

Subsequently, on July 1, 1909, telegram was addressed to Mr. Glavis:

"Reports must be submitted at once, as per instructions and agreement. You may, of course, continue investigation. Reports are wanted *now*. Will send man to Seattle to take charge of investigation and conduct cases in near future. Meantime, continue your investigation."

July 1, 1909, letter was addressed to Chief of Field Division McEniry at Denver, Colorado, relative to your detail to assist Mr. Glavis at the trial of these Cunningham cases, and there was also forwarded to him, for you, at that time a copy of the Attorney General's opinion in the matter of the Alaska coal cases under the new law.

July 7, 1909, this office addressed a communication to Clarence Cunningham, agent of the Cunningham group, requesting him to transmit written stipulation waiving action in these cases by the Juneau, Alaska, land office, and that this office appoint a commissioner to take testimony at various places where witnesses are located; that said testimony may be forwarded directly to this office for decision in the first instance, and that the various defendants will accept service of charges from this office direct; and later, on July 13, 1909, telegram was addressed to Miles C. Moore, one of the entrymen in the Cunningham group, relative to the letter addressed to Cunningham, with the further suggestion that the parties stipulate that all Cunningham cases be consolidated and proceed as one case.

July 16, 1909, Mr. Glavis was directed to indicate the towns or cities in the order in which testimony could be taken in the Cunningham group, and he was further advised that you had been assigned to assist him; and, under the same date, like advices were forwarded to Chief of Field Division McEniry for your information and direction.

Mr. Glavis did not comply with the last wire, but, in lieu thereof, stated that he had consulted with the Secretary of the Interior, who suggested that he request of this office whether the last above wire with reference to the order in which the testimony shall be taken had been sent after the receipt of the telegram from Mr. Glavis of July 6, and his further letter report of July 8.

July 17, 1909, replying to the last telegram from Mr. Glavis, he was advised as follows:

"Your wire sixteenth in reference your consultation with Secretary received. Instructions heretofore issued were made in view of your telegram sixth. Your report of eighth not at hand. Have this day wired Sheridan as follows:

"Your instructions Cunningham case modified. You will proceed to Seattle taking complete charge of case with authority to call for any agents or assistance necessary to bring case to prompt hearing and close."

"You will render Sheridan every assistance, meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation can not proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearing."

The foregoing is a brief summary of the efforts made by this office to secure from its field force a final report in the Cunningham case, and to permit the office to take action looking either to the cancellation of the entries or to their approval for patent.

Every report received from Mr. Glavis in this case concludes with some statement or observation as to what future and further investigation will develop, and leaves the report in a status which precludes this office from taking any action; and he has been advised from time to time it is the purpose and intention of this office that there shall be full and complete investigation and advice prior to the final action upon these entries. It is likewise the intention of this office that these proceedings shall come to a close, and that these entries now under investigation for a period of two or three years shall either be canceled or patented. The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries, and has given to them, his best efforts. At the same time, the proper and expeditious determination of the field investigations at present devolve primarily upon myself, and I am responsible for the result. It was with this matter in mind that my letter of October 7, 1908, was addressed to him, and that my wire of April 20, 1909, was sent, informing him that the cases should come to conclusion, so far as the investigation was concerned, within sixty days, and that he might call for whatever agents he might require; and he was likewise—and has been—authorized to incur whatever expense may be necessary in these investigations. Notwithstanding the explicit instructions contained in my telegram of April 20, 1909, and the different instructions in reference to the Cunningham case, Mr. Glavis in his letter of July 8, 1909, says that:

"Since the submission of my report of March 23, there has been no evidence secured in this group of entries, for the reason that the time allowed in which to make these investigations has been too short to complete the same, etc."

Notwithstanding Mr. Glavis' statement, the record shows that he had at his disposal the entire field force; and he also had explicit notice that I had pledged the entire field force of the department for a report in these cases at a certain time. He has failed, however, and the report can not be made.

You have been placed in charge of the Cunningham group of Alaska coal cases for the express purpose of properly completing the investigation speedily; and thereafter to conduct the hearings upon which the Government will endeavor to cancel the claims. Enough of the record has been recited to advise you that *I expect this result to be accomplished.*

You are advised now, as Mr. Glavis was advised heretofore, that you may call upon me for whatever assistance, to the extent of the field force and the funds available, you may require. If it is a matter of interviewing further entrymen, you should call for a sufficient number of agents to make these interviews *at once*. It is my opinion, however, that Mr. Glavis and his agents have carried this group of cases thoroughly, but as to that I defer to the opinion of yourself after you shall have gone through the record and conferred with Mr. Glavis. In so far as the proper completion of the Cunningham group of cases may require it, you are authorized to call upon Mr. Glavis for any personal assistance, including his own services.

I am unable to agree with Mr. Glavis' letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

Upon the completion of the hearings in the Cunningham cases, you will return to Denver, Colorado, and report to Chief of Field Division McEniry for further duty.

A copy of this letter is this day forwarded to Chief of Field Division Glavis for his information.

Very respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

[The Western Union Telegraph Company.]

Received at Wyatt Building, Cor. 14th and F streets, Washington, D. C.

92 ch xs m 14 Collect Govt. 8pm. Bx Seattle Wn 7.

COMMISSIONER GENERAL LAND OFFICE, Washn., D. C.:

Badji seventh report mailed to-day.

L. R. GLAVIS, Chief F. Div.

[Telegram.]

P-HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 21, 1909.Special Agent McENIRY,
Denver, Colorado:

Sent (red pencil).

Send two good men with Sheridan to work on coal conspiracy, particular interviews, and book examinations. They may return to Denver in about thirty days.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.CWN. WU.
Official business. Government rate.

MT (red pencil).

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, July 21, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have received a telegram from the district forester at Portland, Oreg., requesting that dates of contemplated hearings to involve the 32 coal claims of the Cunningham group in the Juneau (Alaska) land district be not held before November 1. The district forester says in his telegram that he had written to the chief of field division at Seattle, Wash., and requested that such hearings be not held before the date mentioned. The forester has telegraphed to the district forester a request that he report by telegram the reasons for not wishing the hearings before such date.

These cases involve Juneau, Alaska, coal-land surveys 44, etc., for land in the Chugach National Forest, and the file number in the General Land Office is 36996.

I have learned informally at the General Land Office that action looking to an early hearing is contemplated in your department.

I respectfully recommend that the date of such hearings be not fixed until the telegram is received from the district forester giving the reasons for his request.

I have the honor to be, sir,

Very respectfully, your obedient servant,

JAMES WILSON, Secretary.

[The Western Union Telegraph Company.]

Received at Old Post-Office Dept. Bldg., Cor. 7th & F Sts. N. W.

WASH., D. C., July 21, 1909.

To SCHWARTZ, Care Com'r. G. L. O.:

Baje Cissin relative sending two good men with Sheridan, our work never heavier or of more importance than at present. Smith and Phillips will follow Sheridan within two days if your telegram to-day not countermanded. Agents all in field. Can not be here before then.

M. D. (pencil).

McENIRY,
Chief F Div. (pencil).

[Telegram.]

P-HHS
Sent (red pencil).DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 21, 1909.Commissioner FRED DENNETT,
Care Secretary R. A. Ballinger, Seattle, Wash.

Zyda: Tobildnomd has roddol from Persegri elakamidamk in Pofoser fafalaing ficacoment of the Summamkyin yoilamko until lunove. Cyij filatins Krifac jledro or bejahd hafel losomdrh in niddol. Figosa Krifac to cyej hoon sebh yac babir to Cyij, it being moseccilh to todolnamo nedafo poyamt podipa figote for cusy remk torih. Cyclatim fenores denellej for Coiddro with iccacidimdc.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

CWN. WU.

Murphy (pencil).

Department has letter from Secretary of Agriculture originating in Forest Service asking postponement of the Cunningham hearings until November. Shaw says Glavis wrote or wired him recently in matter. Require Glavis to show you copy his letter to Shaw, it being necessary to determine motive behind Agriculture's request for such long delay. Sheridan leaves to-morrow for Seattle with assistants.

Mr. Murphy (pencil).

Official business. Government rate.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., July 22, 1909.

Mr. H. H. SCHWARTZ,
*Assistant Acting Commissioner, General Land Office,
Washington, D. C.*

MY DEAR SCHWARTZ: I have talked again with Glavis and find that the only communication he had with Shaw was his telegram. However, Shaw sent Pierce here, he arriving on the 19th and staying until 21st, and went over all the cases with Glavis. There are 21 claims in the forest reserve. Glavis seems to have taken up with Pierce, the law officer of the Forestry, the question of supplying a man who would be a coal expert to go in and help Kennedy, suggesting the name of Wyngate at Astoria; they have agreed, and it is a question with me whether we should now stop it or allow him to go in, 21 of the claims being in the forest, and we getting the benefit of his knowledge.

Glavis states that he was desirous of having the field investigation completed in order to get the reports as to the single tunnel done for the work on all the claims, or other data in regard to improvements which would lead to evidence showing the cooperation and intent to form a company. He also desires to get such statements as to remarks that may have been made by Cunningham showing that Cunningham was operating for a company. He hopes, with this evidence from the field and documentary evidence, to establish a prima facie case and get the benefit of cross-examining their witnesses. He states that the idea of field investigation was one which he got from you. He seems to think that further evidence was necessary and that we were unduly pressing him; he tries to evade the proposition of our offering all the help he asked, on the ground that the cases needed investigation by one head who should keep his finger on the matter all the time and investigate personally; he also states that we refused him Jones, but candidly admits that we offered him every help he might desire otherwise. I told him that I wished he had waited until I came and not taken upon himself telegraphing to Shaw, as it occurred to me to be calling upon another bureau to find fault with our action, and especially with a bureau which has been trying to pick flaws in our conduct of cases. I have wired Judge Ballinger, as you suggested, that under existing conditions I think it would be wrong to set these cases for hearing immediately. Will take this feature up with Judge Ballinger by correspondence.

Glavis has these coal cases on the brain and can not see anything but just one line. I have told him how it looks to us and have reminded him of everything that we have done for him and that it looks as if he were returning our favors by not standing by us as he ought to. He has not acted as you or I would act under similar conditions. It looks a little treacherous to me, this calling in the Forestry.

Received your wire about Sheridan leaving for this town. I have not told you to hold Sheridan, as I think it would be a good idea for him to go over all the papers and see what he thought of the case. If the trials are postponed until November, what do you think we had better do with him? November was evidently the date suggested by Glavis to the law officer of the Forestry in order that Kennedy might return from the field in Alaska; he could be called in earlier if he only worked on the Cunningham case, but at present that would be false economy.

I am of the opinion that it might be well for you to take a hurried run out here. If you do, I will return here to meet you at time set. I have held Glavis here until next Monday.

Very respectfully,

FRED DENNETT, *Commissioner.*

JULY 22.

HON. R. A. BALLINGER,
Hermiston, Oreg.

Advise telegraphing Schwartz authorizing him to delay issuing notices in important cases subject our talk here until Sheridan can examine evidence obtained.

DENNETT.

SEATTLE, WASH., July 23, 1909.

HON. R. A. BALLINGER,
Secretary of the Interior, Boise City, Idaho.

MY DEAR JUDGE: I telegraphed to you yesterday advising authorization to Schwartz not to set the Cunningham cases for trial immediately. The situation is as follows: Twenty-one claims are on the forest reserve; Glavis has so advised the forester, and he has joined him in moving for a delay until Kennedy can return from Alaska with his report of the field investigation. Glavis seems to expect a showing upon the field which would indicate that all developments have been done with the evident purpose of advancing a single interest. He also desires to find out in what manner the employees were paid, and information of this kind. Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained.

I have no recollection that the matter of field investigation was taken up with me, although I am not certain on this point. Schwartz telegraphs me that the Agricultural Department has requested the postponement, and under all the circumstances I will recommend that their request be acquiesced in.

Am just in receipt of telegram from Schwartz as follows:

"President has increased special agent land office excepted places to ten, but desires to be consulted upon such appointments. Matter originated in this office."

"SCHWARTZ."

I do not know anything about this proposition, or that it had been taken up with the President.

Very truly,

FRED DENNETT, *Commissioner.*

JULY 23.

DENNETT,
United States Land Office, Seattle, Wash.

Considering my personal reluctance to direct proceedings in Alaska coal cases, you should make necessary directions to Schwartz.

BALLINGER.

[The Western Union Telegraph Company.]
[Received at old Post-Office Dept. Bldg., cor. 7th & F sts. N. W.]

Dated Bt Seattle.
To H. H. SCHWARTZ,
Ass't Actg. Com'r. G. L. O., Wash., D. C.:

JULY 23, 1909.

W n 23.

November evidently suggested by Glavis, who desires report field examination before trial. If assistants for Sheridan not started, stop them and let Sheridan come alone for the present.

DENNETT, *Com'r.*

[The Western Union Telegraph Company.]
[Received at old Post-Office Dept. Bldg., cor. 7th & F sts. N. W.]

WASH., D. C., July 21, 1909.

To SCHWARTZ, *Care Com'r. G. L. O.:*

¶ Baje Cisin relative sending two good men with Sheridan; our work never heavier or of more importance than at present. Smith and Phillips will follow Sheridan within two days if your telegram to-day not countermanded. Agents all in field. Can not be here before then.

M. D. (pencil).

McENIRY.
Chief F. Div. (pencil).

[Telegram.]

SEATTLE, WASH., July 23, 1909.

H. H. SCHWARTZ,

Acting Assistant Commissioner General Land Office, Washington, D. C.:

Secretary desires to refrain from any action in proceedings in Alaska coal cases. I authorize you to recommend to Acting Secretary Pierce to acquiesce in request of forestry not to set cases for hearing immediately.

DENNETT, *Commissioner.*

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., July 24, 1909.

The SECRETARY OF THE INTERIOR.

SIR: The telegraphic report from the district forester at Portland, Oreg., regarding the Cunningham group of coal claims in Alaska, mentioned in my letter to you of July 21 as having been called for, is received. The district forester reports that he has not yet had opportunity to have these claims examined upon the ground. He further reports that four coal claims of the Cunningham group, which can not yet be designated specifically, do not contain workable coal. They should not pass to patent for that reason. The district forester recommends that an examination of the ground embraced in the other claims of the group be made to determine whether they contain workable coal. He also reports that he will send a coal expert representing the Forest Service to assist the experts of the Land Office in the examination of coal claims of this group in the national forest.

Until the results of this examination are available, it will not be possible for this department to present the facts. The question at issue in these cases is of such importance to the people of the Pacific coast, and the difficulties in the presentation of the Government's testimony are of such a nature as to make the fullest preparation essential. Accordingly, I have the honor to request that the date for the hearing contemplated in these cases be not fixed until the examination of the ground is concluded and its results are available.

I have the honor to be, sir, very respectfully,

Your obedient servant,

JAMES WILSON, *Secretary.*

[Gray & Knight. John P. Gray, Wallace, Idaho; Henry P. Knight, Coeur d'Alene, Idaho, attorneys and counselors at law.]

WALLACE, IDAHO, July 26, 1909.

Mr. H. H. SCHWARTZ,

Acting Asst. Commissioner General Land Office, Washington, D. C.

DEAR SIR: Your letter of the 7th of July, addressed to Mr. Clarence Cunningham at Seattle, Washington, was delayed apparently in transmission. It was delivered to him on the 21st, and he has just forwarded it to me and I have telegraphed you in answer thereto, as follows:

"Stipulation suggested your letter July seventh Clarence Cunningham relative to hearings coal entries one to thirty-three in Juneau, Alaska, land district satisfactory. I will appear as attorney for all entries."

I will frame a stipulation, sign it, and forward it, together with the entry of my appearance in the various cases.

Very respectfully,

G-M.

(Signed) JOHN P. GRAY.

[The Western Union Telegraph Company.]

Received at 182ch xa g 86 Collect GR.
BxSeattle, Wash., July 26.

JULY 26, 1900.

H. H. SCHWARTZ,

Acting Asst. Commr. General Land Ofc., Washn., D. C.:

Answered (pencil).

Sheridan concurs in advisability waiting arrival of Kennedy and Stoner from Alaska. Could proceed to trial October fifteenth and make report other cases after trial present case. Other alternative, recall Kennedy and Stoner from Alaska after examination

claims in question without examining other claims. Latter course hardly desirable. If concurred in, return Phillips and Smith to Denver. Glavis reports ability overtake his work first of year. No necessity for you to come.

DENNETT, *Commissioner*.

Mr. Murphy (pencil).

Copies by FRL.

[The Western Union Telegraph Company.]

[Received at Wyatt Building, cor. 14th and F streets, Washington, D. C., July 26, 1909.]

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WALLACE, IDAHO, 26.

H. H. SCHWARTZ,

Acting Assistant Commissioner General Land Office, Wash., D. C.:

Stipulation suggested your letter July seventh Clarence Cunningham relative to hearings coal entries one to thirty three in Juneau, Alaska, and district satisfactory. I will appear as attorney for all entries.

JOHN P. GRAY.

P—HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 26, 1909.

The Hon. ACTING SECRETARY OF THE INTERIOR DEPARTMENT.

SIR: Under date of July 23, 1909, I am in receipt of telegram from Mr. Dennett, Seattle, Wash., advising me that I am "authorized to recommend to Hon. Acting Secretary Pierce to acquiesce in request of Forestry not to set cases for hearing immediately."

This refers to the Cunningham group, and is probably predicated upon the fact that Coal Mining Engineer Kennedy is in Alaska making examination of the ground for the purpose of determining any material facts which may be ascertained by such physical examination, and the further fact that Attorney Sheridan, who for the past year has been engaged exclusively in the trial of coal land cases—particularly conspiracy cases—for the General Land Office, has been heretofore designated to conduct this case, and is now under orders to proceed to Seattle. It will require some little time for him to familiarize himself with the facts. I do not understand, however, that it is the intention of the commissioner that we shall arbitrarily postpone the trial of these cases until next November, but that they shall proceed the same as other cases as soon as the General Land Office has the evidence in hand and is prepared to go on.

It is my opinion that we have the evidence in hand; that we are prepared to go on; and that such additional details of evidence as may be required would, in the ordinary course, be in hand before the present contemplated proceedings could reach the stage of the actual taking of testimony. However, I defer, of course, to the suggestion of the commissioner.

Respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

CWN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 27, 1909.

MY DEAR SCHWARTZ: Glavis has written me a letter giving the history of the coal cases and running throughout with innuendo against me. I think he has got me convicted of conspiracy in his mind. He certainly is a wonder; I would not have his mind for all the money in the world. I quote from the last of the letter.

"Another phase of the investigation to which I beg to most earnestly call your attention is my telegram to you dated June 23, 1909, as follows:

"Have not received affidavits left in Washington to be copied. Have any admissions been made to you by Alaska coal claimants? Answer by wire quick, and please write synopsis of such admissions. Same might aid investigations."

"Under date of June 24, 1909, you replied as follows:

"Matter mentioned in your wire yesterday. Affidavits transmitted 21st. No admissions made by claimants."

"I was, therefore, very much surprised to have since received affidavits and verbal statements from persons interested in the acquisition of the Alaska coal fields, in which

they admit or give every reason to believe that they were attempting to fraudulently secure title, and also state that such admissions were made to you personally while in Washington endeavoring to secure such legislation that would validate these fraudulent claims. Owing to their avowed friendship and admiration of you I was unable to detect their motive in the premises and can not, therefore, reconcile their statements to the telegram above quoted.

"I shall be very glad to give this phase of the investigation my personal attention upon receipt from you of more definite information.

"Respectfully,

L. R. GLAVIS."

I told him that I had no recollection of an explicit admission by Mr. Harriman that the Alaska Petroleum and Coal Company was organized for the purpose of taking over the coal claims; or was to take the coal claims; or was to have an interest in the coal claims. My recollection is, in talking with him and with other Alaskans, there was a virtual admission that these claims were to be operated together. That my attention was first called to the coal feature of the Petroleum and Coal Company, as I recollect it, by the production of an advertisement in a magazine advertising the oil company as being in possession of coal claims, shown me by Glavis in Portland in 1908. The conversation was, in my recollection, a general one and not a specific one—that is, with the coal claimants.

It is possible that all these coal men talked generally with me at the time legislation was endeavored to be secured; and you know that I stated very generally that I could not patent unless legislation was secured; you also know that I have stated the same after the Attorney-General's opinion. It appears that after Pierce gave his opinion he went to the claimants and got very liberal statements from them; whether he showed the opinion or not I do not know; he got them any way with the knowledge of the Attorney-General's opinion. All of which is beautiful, but not a game I could play. What talk they gave me when in Washington I do not know, but it certainly was not such that I would constitute myself an investigating committee, although it might place me in a position where I would not issue patents without explanation.

Now what do you think of this? Is the boy nutty? The rest of the letter is as bad, and it puzzles me to think what sort of a kid he is. I will show it to the Secretary when I meet him, and then send it on to you. If necessary I will take it to Taft to explain any relation which I have had with the matter. As a matter of fact the thing pains me more than anything else. Can you analyze it?

Sheridan and the other two will go to-morrow; Sheridan will hold himself in readiness to take the cases up later.

Best wishes.

Yours, truly,

FRED DENNETT.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., July 27, 1909.

Mr. H. H. SCHWARTZ,

Acting Assistant Commissioner General Land Office, Washington, D. C.

MY DEAR SCHWARTZ: My attempt to intercept Phillips and Smith was futile, as they arrived here. I would have telegraphed you earlier, but did not realize until your last telegram that anyone except Sheridan was coming. Sheridan has gone over the cases thoroughly and thinks that the evidence which it is hoped to gain from Kennedy's visit to Alaska will be very material, and therefore it is the best to postpone until October 15. I have concurred, anticipating your acquiescence by the character of your telegram to me. The Forestry can be blamed for the action in the matter. I hoped to receive a telegram from you in answer to mine of yesterday.

The rest of my trip will be on quick time, with the exception of perhaps a day or so at Lincoln, if I conclude to go in the 640-acre country.

Sheridan has taken charge of the Cunningham case and impresses me very favorably; I think he can handle it against any rival lawyer they may bring against him. The rest of the Alaska cases are in a bad mess. Glavis is very much enthused on the proposition of canceling them all and getting the lands back in cold storage, and this is just about what will happen unless Congress helps out.

I presume you have my itinerary now from Altizer. I will probably run ahead from now on of schedule time.

Tennant, who used to be a partner of Ballinger, says that six months ago, namely, February, they filed the application of the Tunc Valley Irrigation Company for right of way over the Colville, in Okanogan County, this State; he says they have heard nothing at all about it. I wish you would look this up and have him advised.

Very respectfully,

FRED DENNETT, *Commissioner*.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., July 27, 1909.

Mr. H. H. SCHWARTZ,
Chief of Field Service, G. L. O., Washington, D. C.

SIR: I arrived in Seattle on the afternoon of the 24th inst., and immediately conferred with Mr. Glavis on the Cunningham case. Mr. Glavis turned over to me all correspondence on file in his office relative to this case, and I immediately proceeded to study the same with a view to deciding what action should be taken in the premises.

The correspondence is rather voluminous and required my time until yesterday to digest its contents. After conferring with Mr. Glavis fully on this matter and weighing carefully all of the record evidence in his possession, the following appeared to be the principal points to be considered in this case:

First. As regards the value of the record evidence in the possession of Mr. Glavis:

There are a number of affidavits from the entrymen which corroborate the original affidavit of Mr. Cunningham, dated March 6th, 1908. In fact, Mr. Glavis sent copies of this affidavit to various of the coal claimants whom Mr. Cunningham says he represented and their corroboration of the Cunningham affidavit was made on a sheet attached thereto and then returned to Mr. Glavis. This procedure was observed generally. The affidavits show a practically uniform concurrence in the statements made by Mr. Cunningham in his affidavit already referred to. Mr. Cunningham says:

"We have an understanding that when the patents have been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea when titles were secured we would combine our claims and work the coal field for ourselves."

This is plainly declared to be illegal and in direct violation of the law, as will appear from the opinion of the Attorney-General dated June 12, 1909, and addressed to the Secretary of the Interior, from which I quote:

"3. A verbal agreement by two or more entrymen made prior to the initiation of the entry that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike."

Regarding which the Attorney-General says:

"The consummation of any of the agreements or contracts mentioned in any of the three above-quoted paragraphs would have vested in one association or corporation the title to the lands embraced in several entries is a clear violation of section 2350, R. S., which provides that 'the three preceding sections shall be held to authorize only one entry by the same person or association of persons.'"

The record evidence of course is strong on this point, and if there were no conflict all would be well, but an affidavit of Horace M. Davenport, dated July 10, 1909, states:

"If there was any company in connection with the coal claims I was not a party to it, and know nothing about any company or any plan to group the several claims. Mr. Cunningham never made any proposition to me that he would sell my claim and get one-eighth of the profit derived from same."

Furthermore, in an additional affidavit of Mr. Cunningham, dated September 4, 1908, Mr. Cunningham proceeds to explain away the significance of the notation made by him in his journal concerning his relation with the coal claimants in this case.

From the foregoing it is apparent that there is going to be an entire change of front from what was originally set out in the first Cunningham affidavit and that, beyond a question, the claimants will be coached in accordance with Cunningham's desire in this matter. This will give an entire conflict and would leave the case, as regards the record evidence, in a very jumbled condition.

Second. As regards the Government's witnesses available at this time in case a hearing were to be immediately taken up, Special Agents S. M. Stoner and Andrew Kennedy are absent in Alaska at present, and from what I learn from Mr. Glavis, their instructions were not such as necessarily to have them complete the examination of the Cunningham group before considering several other groups under investigation there also; hence it is not at present known whether or not they would be of any use if immediately called, as it may well be, but that they have spent their time examining other than the Cunningham group to date. Again, with the best possible speed, they could hardly return to Seattle before a month from now. Timber Expert Ames, of the Forestry Department, I am informed, is now in Alaska and on his way to the Cunningham group. Now, inasmuch as four of the thirty-three entries in this Cunningham group were taken up for their timber rather than their coal values—for it is conceded by the parties interested that they are not valuable as coal lands—the condition of these four entries as regards their timber would be a material piece of evidence; for it appears from the record evidence now in the possession of Mr. Glavis that the entrymen who took up these four entries have been similarly assessed with those who took

up the coal entries. Therefore it is logical to assume that, the assessment being the same and the values of the lands decidedly different, these timber lands, if such they be, were taken up as a community proposition to be utilized by all of the claimants in connection with their general scheme of jointly developing the entire tract for all. If this assumption be correct, it is of course very desirable to establish the exact condition of these four entries as regards their timber. Again, from what I can learn from the record evidence in the possession of Mr. Glavis, and which is supported by his own personal opinion of the situation, it appears that nearly all of the money expended was on one general tunnel, which necessarily would be of immediate benefit only to the entry upon which it is constructed and perhaps a few adjoining entries. It will be apparent to you from this situation that a map of the actual conditions on the ground as regards development and timber is essential to establish the Government's contention. From the record evidence it appears that Mr. Cunningham will contend that thirty-odd openings have been made on these entries, his aim being to show that they were individual and independent concerns. Now, if, as a matter of fact, a map made on the ground shows this not to be the case, and that all development properly so called was upon one main tunnel, you can realize how strong will be the Government's case and how easy a matter it will be to defeat these entries.

From my past experience in conducting hearings, and after a careful study of the record evidence available, I can readily see what the plan of the defense is. Should we proceed to the hearing without the assistance of an engineer and coal expert, such as Mr. Kennedy is, they might readily contend many things to strengthen their case which we would be unable to refute for want of a thorough knowledge of the actual conditions on the ground. This, of course, would prove a serious impediment to the success of our contention; and, inasmuch as there are over five thousand acres of land involved, most of which is conceded to be valuable coal land, I feel that it is only safe and consistent to have an exhibit at the hearing setting out developments, improvements, and timber conditions on this group before proceeding. This is my very best judgment on the matter; and in view of the importance of winning this first Alaska case—for I am convinced that the Government should prevail in it—I do not care to recommend an immediate hearing and then entirely disappoint you in the result.

I fully realize your desire to urge this matter to a speedy conclusion and it is my aim to cooperate with you most heartily to this end; but I am sure that when you have considered the points set out in this letter, and the importance of this case, that you will agree with me that it would not be desirable to hazard a hearing when the result will necessarily be so doubtful. As a matter of fact, all I could do at present, were you to immediately appoint a United States commissioner and direct a hearing, would be to put Mr. Glavis on the stand, introduce the record testimony, and then depend upon the cross-examination of about thirty-three coached witnesses to establish the Government's contention. You will agree with me, I am sure, that this would not be wise.

Mr. Glavis suggests that the hearing be set for about the 15th of October. He and I are agreed that it will be promptly finished when we have this field evidence from Alaska at hand. Furthermore, were Special Agents Stoner and Kennedy to be immediately recalled, assuming that they were ready to testify on this Cunningham group, this would necessarily postpone the completion of field investigations on all of the other Alaska coal entries—which Mr. Glavis informs me are about nine hundred in number—until next summer. This clearly would occasion great expense and additional delay in the whole Alaska situation. I merely mention these points as side-lights on the Cunningham case and do not desire to be misunderstood as volunteering any advice on the matter outside of its significance in that respect. Mr. Glavis and I are of the opinion that even if we await the arrival of this Alaska testimony we can complete the hearing on the Cunningham group and place the record before the commissioner for his decision before the end of December of this year, providing, of course, no untoward event retards us and that the other side does not resort to dilatory tactics. I realize the Government has the whip-hand in these hearings and, of course, if I am called upon by you to conduct same I will drive the matter as hard as consistently can be done.

I respectfully recommend that the case be postponed and hearing not set until such time as the Alaska testimony is at hand and ready to be used in the hearing.

There is no additional record evidence to be obtained at present, as far as we know, and hence it would be unnecessary to keep Special Agents Smith and Phillips here for that purpose.

I desire to state that in reaching my conclusions on this matter and in making my recommendations I have been influenced solely by the facts in the case as they appear from the record evidence available and from my own best judgment of the

matter. Mr. Glavis has in no way attempted to influence me on this matter and I had made up my mind as to what I thought best to do in the premises before I conferred with him on this case in detail, hence I wish to assume entire responsibility for the recommendation which I make in this communication.

Respectfully submitted.

(Signed)

JAMES M. SHERIDAN,
Special Agent, G. L. O.

JMS/ES.

(Pen) Aug. 1/09.

I concur.

H. H. SCHWARTZ,
Chief Field Service, G. L. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 23, 1909.

MY DEAR SCHWARTZ: In my conversation with Glavis when I arrived here I stated too broadly that the matter of field investigation had not been taken up with me; in this I was inaccurate. I afterwards recollected your bringing the matter up and my saying that the one tunnel would probably be admitted, and that a field investigation was only necessary in case of desiring to establish the coal character of the land.

Under all the circumstances it is better to postpone.

Glavis told me that he did not want help to finish the cases. He now comes and asks for Pollard, who is here. In view of the charges he himself made against Pollard, I do not think the request should be granted. When the depositions are to be taken we can furnish some one better than Pollard. It is my present impression that Sheridan, who impresses me very favorably as an able, aggressive lawyer, with a good head, should be placed in charge of all the hearings at a later date.

I can only think that Glavis is losing his head. He certainly is endeavoring to "foul the nest."

Best wishes.

Sincerely,

FRED DENNETT.

The inclosed is from a man who called on me at solicitation of the judge. He is a detective and did not impress me favorably. As far as I am concerned, as I need hardly tell you, no appointments will be made to the excepted class without your advice. How did it originate? We took the matter up casually, but I thought we did not press it.

P—HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 28, 1909.

Mr. JOHN P. GRAY, *Wallace, Idaho.*

SIR: I have your wire of the 26th advising that the proposed stipulation in Clarence Cunningham group of Alaska coal cases is satisfactory and that you will appear as attorney for all the entries.

You are advised that since receipt of your last wire the Forest Service has filed formal protest against the hearing of these cases at this time, alleging that it desires to make certain field examinations on its own behalf, the lands now being within a national forest. The Department of Agriculture makes formal application that the hearings be delayed until November 1st. This request for additional delay was based, in part, upon the opinion of Chief of Field Division Glavis, now at Seattle, that the cases should not proceed to hearing until the return of two government employees now in Alaska. In view of a message received by me from the commissioner, who is now in Seattle, it is my opinion that these cases can not be brought to trial until sometime early in October. In the meantime it is suggested that you file your formal appearance with the record in this case on behalf of all entrymen, and, further, that you prepare and forward to this office a stipulation covering the one referred to in my letter of the 7th to Cunningham, with the additional clause that the cases may be consolidated and tried as one case.

Respectfully,

(Signed)

H. H. SCHWARTZ,
Acting Assistant Commissioner.

OWN.

EXHIBIT 6.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 28, 1909.

MY DEAR SCHWARTZ: In my conversation with Glavis when I arrived here, I stated too broadly that the matter of field investigation had not been taken up with me. In this I was inaccurate. I afterwards recollected your bringing the matter up and my saying that the one tunnel would probably be admitted and that a field investigation was only necessary in case of desiring to establish the coal character of the land.

Under all the circumstances, it is better to postpone.

Glavis told me that he did not want to help to finish the cases. He now comes and asks for Pollard, who is here. In view of the charges he himself made against Pollard, I do not think the request should be granted. When the depositions are to be taken, we can furnish some one better than Pollard. It is my present impression that Sheridan, who impresses me very favorably as an able, aggressive lawyer, with a good head, should be placed in charge of all the hearings at a later date.

I can only think that Glavis is losing his head. He certainly is endeavoring to "foul the nest."

Best wishes,

FRED DENNETT.

The inclosed is from a man who called on me at solicitation of the Judge. He is a detective and did not impress me favorably. As far as I am concerned, as I need hardly tell you, no appointments will be made to the excepted class without your advice. How did it originate? We took the matter up casually, but I thought we did not press it.

Memo: July 28, 1908: Upon inquiry Mr. Glavis this date, I was informed by him that specific instructions were given men now in Alaska to have Cunningham case completed before their return this summer; also, Mr. Glavis informs me he does not need Mr. Smith or Mr. Phillips either on Cunningham or other coal cases now under investigation there; that he has enough men to complete Alaska field work, at present under way, before this summer is over.

J. M. SHERIDAN.

DEPARTMENT OF THE INTERIOR,
Washington, July 29, 1909.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to letter of Acting Assistant Commissioner in *re Cunningham coal cases, Alaska*, I enclose herewith letter of even date to the Secretary of Agriculture relative to delay in hearings.

Very respectfully,

(Signed) FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, July 29, 1909.

THE SECRETARY OF AGRICULTURE.

SIR: Replying to your letters of July 21 and 24, 1909, requesting delay in holding hearings involving coal-land entries in the Cunningham group, Juneau (Alaska) land district, I have to advise you that this department will gladly cooperate with your department in obtaining the material facts with reference to these claims and will take proper action when the reports are received. However, these entries have now been suspended for three years and it is important that very early action be had relative thereto, not only because of the personal interests of the claimants, but of the vital importance, both to the people of Alaska and to the Government, that some portion of the Alaska coal deposits be available for use.

I have therefore to request that the Forest Service be directed to expedite in every possible manner whatever investigation it may desire to make, and to file its findings at the earliest possible moment.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington July 29, 1909.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to letter of Acting Assistant Commissioner in re Cunningham coal cases, Alaska, I inclose herewith letter of even date to the Secretary of Agriculture relative to delay in hearings.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Ore., July 30, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR SCHWARTZ: Conditions in this office seem to be in good shape. I am of the impression that Christensen has his case in good control. He complains, however, that they were not well filed and that he has had considerable trouble in ascertaining the exact situation of matters before him. This, of course, arises from the old trouble and also from the fact that, as I gather it, the system was not as good as it should have been.

I am to see McCourt to-day and will urge upon him the necessity of pressing all cases. Delay in a great number of cases has been occasioned by the fact that the Dorgan and Devine case is a test one, and upon it hinges the fate of about 200 other cases. It is being held up pending a conference between Lawler and McCourt. I saw the Secretary last night, and he suggests that we ask McCourt to forward the papers to Lawler so that they can be gone over and not necessarily wait until Lawler appears here.

[The following appeared in ink in the margin: "He is out and could not be reached. This will be done. Evans, Assistant United States Attorney-General, agrees."]

With the work that Christensen has to do here you were quite right in refusing to detail Jones to Glavis. A great number of Christensen's men are new men, and it would be a mistake to weaken him by taking any of his experienced men away. In fact, it is my impression, although he has not complained, that another good man could be employed to advantage. He has a case in the southern portion of the State which has never been worked up, but which presents considerable possibilities. He trusts to be able to go into this himself.

Arundell has not yet received his appointment. I wish you would see that this comes forward as soon as possible.

Wingate has been employed by the Forest people and directed to report for instruction to Glavis. The latter was here this morning on his way to Spokane and Moscow. He was not very explicit as to his reasons for coming here, but judge it was to meet Wingate and give him directions.

The only trouble that I have met in the field so far was that concerning which I have written you and telegraphed. There is no necessity in the world for it, and it looks to me just like bad blood.

Have you thought of Dezendorf for the position on the board of law review? I understand that he used to be a mineral man.

[The following appeared in ink on the margin: "Oregon Lumber Company. G appeared embarrassed. C. will report what he was doing."]

Have a letter prepared addressed to surveyors-general asking them to submit their opinions on the question of doing the remaining surveys directly under the office by the employment of surveyors instead of under the contract system. I find that the surveyor-general here is in favor of it, and I want to make a big fight for it this fall.

I hope to be back from the 15th to 20th, but will probably take a few days' leave.

If there is anything important after my interview with McCourt will write you again.

Very truly, yours,

FRED DENNETT,
Commissioner.

Hustle all Siletz cases. We will try them and thus clear records of the cases. Did so.

H. H. S.

R

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., July 31, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge your letter without date, requesting expedition in the examination by the Forest Service of coal land entries in the Cunningham group, Juneau, Alaska, land district.

I have to advise you that every effort is being made to expedite the examinations as rapidly as possible, and that orders have been given for an agent to proceed at once to the district in question.

Very respectfully,

(Signed) JAMES WILSON,
Secretary.

EXHIBIT 7.

THE PORTLAND,
Portland, Oreg., July 31, 1909.

DEAR SCHWARTZ: Dennett and I had quite a talk on the coal cases, especially that part showing him up. He has no doubt written you stating that I am trying to involve him, etc. I want you to weigh the facts and determine whether my action was not the best way in which to present it—think of the other methods that could have been followed. He realizes that he has not done right. I could go into details and tell you many things, but I shall not do so because the purpose of this letter is not to influence you against Dennett. However, I do not want him to impair our friendship, which I prize very highly, as I have few real friends. I again do not wish our friendship to influence you in doing your duty officially.

Keep out of the cases. If possible, let Dennett fight his own battles.

It is my opinion that neither Dennett nor B. will last long, and surely not Dennett—he can not remain in. Now, under such circumstances, why do you not try for the place? I am quite sure you can win out. In other words, Schwartz, you have known my opinion of D. for a long time, and as he is in a tight place at present, he will be very apt to try to place the blame on some one else.

Your friend,

LOUIS (R. GLAVIS).

P—HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 3, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Washington.

SIR: I have your letter of the 27th ultimo, in reference to the status of investigation involving the Cunningham group of coal entries in Alaska, and note your opinion that a proper presentation of this case will necessarily await return of Special Agents Kennedy and Stoner from Alaska, and that it is expected the taking of testimony may begin on October 15.

I concur in your letter, and you will continue in charge of the case and bring it to such state of completion as will enable the Government to properly present all the facts. In the meantime this office will arrange for stipulation between the Government and the Cunningham group for the taking of testimony before a commissioner and for the consolidation of all the claims, as to which matter you are directed to reply to my telegram of July 16, 1909, to Mr. Glavis, requesting the names of the towns and the order in which it is desired on the part of the Government to take testimony, which telegram Mr. Glavis has neglected to answer.

Respectfully,

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

CWN.

[Telegram.]

P-HHS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 5, 1909.

Special Agent McENIRY,
Denver, Colo.:

My letter July twenty-one to Sheridan addressed to him at Denver, Cunningham case. Has he secured letter?

CWN WU

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

[The Western Union Telegraph Company.]

[Received at Wyatt Building, cor. 14th and F streets, Washington, D. C.]

AUG. 5, 1909.

529 ch a2 L&o 19 Collect. Govt 650pm.

DENVER, COL., 5.

COMMISSIONER GENERAL LAND OFFICE,
Washn., D. C.:

Baje to-day, Sheridan received letter here August second, forwarded from Seattle.
McENIRY.

The foregoing telegram contains the following notation on face:
P/Cunningham Coal Case (Alaska). H. H. S.

P-HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 7, 1909.

Mr. M. D. McENIRY,
Chief of Field Division, Denver, Colo.

SIR: I have your telegram in reference to my letter to Special Agent Sheridan, which it appears was sent to Denver instead of Seattle, thereby failing to reach him.

Please so arrange Mr. Sheridan's details that he will be available upon short notice to return to Seattle. It will be necessary for Mr. Sheridan to return to Seattle, and try the Cunningham group of coal cases, and, possibly, other Alaska cases.

Respectfully,

CWN.

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 12, 1909.

M. D. McENIRY,
Chief of Field Division, E. & C. Building, Denver, Colo.:

Direct Sheridan to return to Seattle and work on Cunningham case until same shall be concluded.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 17, 1909.

JAMES M. SHERIDAN,
Special Agent, care Glavis, Post-Office Building, Seattle, Washington:

You will act as attorney for Government in trial of Cunningham case. Give your time to thorough consideration evidence and law applicable. Submit to this office the form in which Government's charges should be stated. On that see Glavis' suggestions. John P. Gray, of Wallace, Idaho, wires he is attorney for each claimant.

Secure from him proper appearance by him as attorney for each claimant. Then draw stipulation that the thirty-three Cunningham group entry hearings may be consolidated and tried together; that Gray will accept service of charges for each entryman and that taking of testimony may be begun at any time in October, nineteen nine, after five days' written notice to Gray; that the evidence shall be taken before a commissioner to take evidence appointed by this office, official stenographers to be named by this office, and commissioner to proceed from place to place and take evidence unless it is found necessary to take deposition because of distant location of witness; notice to take deposition to follow rules of practice; that service of charges and consideration of the evidence by local office be waived, and record to go to this office for decision in first instance, with usual right of appeal reserved. If Gray refuses to stipulate, charges will be served through the local office and case proceed under rules. At such times as Glavis is out of Seattle you will take charge of records and correspondence in case. Consult Glavis and wire whether feasible to send Colorado coal engineers to aid in Alaska field examination of other cases and so permit return of Kennedy and Stoner after they complete examination of Cunningham lands. Should suggested action be advisable and Forest Service prefer to keep its man in Alaska until all claims are examined, we may take his deposition later if his work should develop anything of value not already covered by our own engineers.

(Signed) SCHWARTZ,
Acting Assistant Commissioner.

RSC. Chg. G.L.O. W.U.

EXHIBIT 3.

WASHINGTON, D. C., August 18, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, General Land Office, Seattle, Wash.

MY DEAR MR. SHERIDAN: I inclose you herewith copies of letters of date July 20, July 26, a memorandum without date, July 28, and July 31.

These matters are brought to my unofficial attention, but they pertain entirely to official matters. You need not give consideration to the last two paragraphs in the letter of July 31.

You will call upon the writer or author of the letter of July 31, 1909, addressed to me, and advise him that I am in no way prejudiced against him by reason of any previous matters, or any matter referred to in said letter, and that, on the other hand, I am in no way prejudiced against the person to whom he makes reference, but that it is necessary that thorough investigation be made of any official matter which may form the basis of the opinion of the writer. You will also make any independent inquiry or investigation that may be necessary.

You will advise the writer of the letter of July 31 that the subject-matter of this letter and the inclosures attached are known only to yourself, himself, and myself, and that there is to be no suggestion made or given out that this matter is a subject of inquiry.

After you shall have completed your investigation, you will submit your report, together with this letter and inclosures, to the Secretary of the Interior.

This is an official direction to you in my capacity as chief of the field service.

Respectfully,

(Signed) H. H. SCHWARTZ,
Chief of the Field Service.

WASHINGTON, D. C., August 20, 1909.

Hon. R. A. BALLINGER,
Secretary of the Interior, Seattle, Wash.

DEAR SIR: I am sending you herewith a letter for Special Agent Sheridan. Please have Mr. Carr hand it to Mr. Sheridan, unless you wish to make other disposition of it. I have hesitated taking any action upon the letter of July 31 because of its personal reference, but feel there is no alternative. About the day of its receipt, and before newspaper canards were being published, I answered the letter, but retained no copy of such answer. I advised the writer that my confidence in him was not shaken, and that, on the other hand, my confidence in Fred was complete, and I felt the writer of the letter was utterly mistaken; that the charges set up in his letter could not be presented to me unofficially, and I take no action officially; that

either Glavis or Dennett would have to resign, or Glavis discover his mistake and make suitable reparation by apology; that so far as the commissionership was concerned my entire confidence and loyalty was with Mr. Dennett.

Glavis should not be able to say in the future that he put this matter up to us and we did nothing. Some of the papers indicated that Glavis knew so much the Land Office dared not discharge him. He is necessary to the trial of the Cunningham cases, unless we are to start over again. I think the Forest Service would like us to discharge him, that they might employ him and use it for newspaper purposes.

Respectfully,

H. H. SCHWARTZ.

AUGUST 20, 1909.

HON. R. A. BALLINGER,
Secretary of the Interior.

SIR: As to the 158.68 acres involved in the entry of lands at Bozeman, Mont., June 11, 1909, and which was published as 15,868 acres of land, valuable for power sites, and alleged to have been entered in the interest of power corporations, I have the honor to report as follows:

On December 23, 1899, George L. Ramsey deeded to the United States 160 acres of land in the Sierra Forest Reserve, and under the act of June 4, 1897 (30 Stat. 36), selected in lieu thereof 4 unsurveyed tracts of 40 acres each in T. 4 N., R. 3 E., M. M., Montana, Bozeman district. Said act authorized selection of unsurveyed lands.

On May 21, 1900, Ramsey filed his application to amend the selection so as to change unsurveyed NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 10 in said township to surveyed lot 1, sec. 14, T. 3 N., R. 2 E., containing 38.68 acres. He showed that he had made a mistake in describing the tract which he had intended to select, said tract being really described as part of section 11, which was railroad land and not subject to entry. The amendment was allowed by this office August 22, 1902. Ramsey was required to waive his right to take the full area of 40 acres when he chose this tract of 38.68 acres, and this area accounts for the fractional acreage in the selection as amended. Afterwards a contest alleging prior settlement on this lot was filed, but on hearing it was decided in Ramsey's favor February 8, 1905. No action has since been taken.

As to the other three unsurveyed tracts selected by Ramsey in 1899, the law requires that when land is finally surveyed the selector must file an additional paper giving the new survey description of the land sought.

On June 11, 1909, Ramsey filed proof which showed that one of the other three lots selected by him was properly described (as it was in the original selection) as SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 8, T. 4 N., R. 3 E., M. M., the plat of survey, included in this section, having been approved June 30, 1908, and filed in the local office November 23, 1908. He also showed that the two tracts described in his original selection by metes and bounds had proven to be, according to said plat, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 23 in said township, being land embraced in a railway grant, and that the other tract described in that manner had proven to be SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 36 in said township, a tract which passed to the State under its school grant. He therefore asked to have his claim as to said two tracts canceled, and that he be allowed to select in lieu thereof two other forties. The matter came before this office. By letter of July 15, 1909, Ramsey's selection as to the tracts in sections 23 and 36 was canceled, but so far as concerned his application to have other lands instead thereof the following instructions were sent to the local land officers:

"In your letter of June 11, 1909, with which you transmitted the above-indicated application, you failed to report as to the occupancy or nonoccupancy of the NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 26, T. 3 N., R. 2 E., and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 28, T. 3 N., R. 3 E., desired to be selected in lieu of the tracts described. You will accordingly make prompt report relative thereto. In the meantime reserve such tracts from further entry until otherwise notified. There is also on file with the papers in the case a protest by William H. Harbison, who made homestead application to enter SE. $\frac{1}{4}$ of sec. 28, but consideration of said protest, as well as consideration of the proposed amendment, will be deferred until your report, above indicated, is received in this office."

No further steps have been taken in the case since July 15, 1909, and, as will be seen from the above, the entire matter is still pending; that is, the selection now embraces lot 1, sec. 14, T. 3 N., R. 2 E., and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 8, T. 4 N., R. 3 E., and the application to embrace therein the NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 28, T. 3 N., R. 3 E., and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 26, T. 3 N., R. 2 E., in lieu of the two eliminated tracts is still unadjudicated.

I now give in concise form a statement of the situation and status of each of the tracts involved, properly marked plats of survey being referred to.

1. *Lot 1, sec. 14, T. 3 N., R. 2 E., M. M.*—This tract borders on the Missouri River and contains 38.68 acres. All of section 14 was withdrawn by Secretary's order of January 18, 1909, for power sites; it was restored April 7, 1909. The selection has been amended so as to embrace this tract and is still pending as to it. Said section 14 was, on February 7, 1905, withdrawn from entry except restricted homesteads under the second form provided by the reclamation act of June 17, 1902 (32 Stat., 388), and this order of withdrawal is still in force. Ramsey's right to this tract relates back, however, to May 21, 1900, when he filed his application to amend the selection so as to embrace same. They therefore antedate said withdrawal and are not affected thereby.

2. *SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 8, T. 4 N., R. 3 E.*—This tract contains 40 acres and lies about $\frac{1}{4}$ miles from the Missouri River; the Sixteen Mile Creek flows through it. This tract is still embraced in the selection, the description originally contained therein being correct, according to the plat of survey, but the case has not yet been adjudicated as to it. This tract was included in the power-sites withdrawal of January 18, 1909; it was restored to entry by the Secretary April 7, 1909. Ramsey's right to this tract relates back to December 23, 1899, the date when he filed his original lieu selection. If Ramsey's selection proves valid, it would, of course, have been superior to the January 18, 1909, withdrawal.

3. *SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 23, T. 4 N., R. 3 E.*—This tract contains 40 acres; it is nearly $\frac{1}{4}$ miles from the Missouri River. Said land has never been withdrawn from entry. This is one of the tracts originally selected by Ramsey by metes and bounds. It is within the granted limits of the Northern Pacific Railway Company, and the survey having shown the land to be part of an odd-numbered section, title passed to the company under its grant by the act of July 2, 1864 (13 Stat., 356), and Ramsey not having any prior rights, he could not have maintained, as against the railway company, any claim by virtue of his selection. Same was, on his own application, therefore, canceled on July 15, 1909. For land sought in lieu thereof see paragraph 6.

4. *SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 36, T. 4 N., R. 3 E.*—This tract contains 40 acres and lies about $\frac{1}{4}$ miles from the Missouri River. It was described by metes and bounds in Ramsey's original selection, and by the survey of 1908 proved to be part of the school section, title to which passed to the State. Ramsey could maintain no right as against the State, not being a bona fide settler, and his selection as to it was therefore canceled July 15, 1909, as above stated, on his own application. This land has never been withdrawn from entry. For land sought in lieu thereof see paragraph 5.

5. *NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 28, T. 3 N., R. 3 E.*—This tract contains 40 acres and is nearly $\frac{3}{4}$ miles from the Missouri River. Ramsey's application to amend his selection so as to obtain this land in lieu of the school land is still pending and undetermined. The plat of survey of this township was filed November 2, 1874. By order of the Secretary of the Interior of October 13, 1906, lands in this township were withdrawn from entry under the coal laws. On November 7, 1906, this withdrawal was extended to all filings and to sales, but on December 17, 1906, the previous orders were modified so as to apply to coal entries only. Two successive homestead entries were made for the entire SE. $\frac{1}{4}$ of sec. 28, the last of which was canceled by this office June 7, 1909, on account of failure of the entryman to submit proof of residence and cultivation within the statutory period of seven years. There is at this time pending a protest against the selection of this land by one William H. Harbison, who has made application for homestead entry for said SE. $\frac{1}{4}$. Not in power-site withdrawal.

6. *NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ (properly called lot 1) of sec. 26, T. 3 N., R. 2 E.*—This tract contains 39.85 acres and touches the Missouri River for a distance of 400 feet. This is the tract sought by Ramsey in lieu of the railroad land originally selected by him. The plat of survey of the township was filed September 21, 1874. On January 18, 1909, the tract in question was included in the withdrawals from all forms of entry by the Secretary of the Interior, under his supervisory powers, as power sites; it was restored to entry by the Secretary April 7, 1909. This tract was at one time embraced in a homestead entry, which was canceled, as the result of a contest, August 28, 1900. Ramsey's application to amend his selection so as to secure this land is still pending and undetermined. These two tracts last discussed comprise a total of 80 acres, and are all the land sought to be selected at Bozeman June 11, 1909.

From the foregoing it will be seen that the 15,868 acres published dwindles to an application by Ramsey to select 80 acres (which was reported adversely by the local office) and that this office returned the application as incomplete and "deferred consideration." If Ramsey makes a complete application, the legal objections thereto, if any, will then be considered.

The original statement issued hereon was incomplete for the reason that the files in the office were not in place and could not be located after several days' search, and a

telegram from Bozeman was relied upon in assuming that Ramsey sought to select 158 instead of 80 acres. The files have been returned to their place; hence this statement.

The office does not know what kind of letter Mr. Pardee read to the Reclamation Congress, but the foregoing is the official record and status.

7. With respect to the railroad selection of "80 acres in section 20, 4 NE.," referred to by Mr. Pardee as having been filed at Bozeman, I have the honor to report as follows:

On May 5, 1909, the Northern Pacific Railway Company filed its lieu selection, Bozeman 02422, under the act of July 1, 1898 (30 Stat., 620), for E. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 20, T. 4 N., R. 3 E., M. M. The plat of survey, including this tract, had been filed in the local land office November 2, 1874. The land had never been entered prior to the filing of said selection. It is about three-fourths of a mile from the Missouri River. The records show that on January 18, 1909, this tract was included in the lands embraced in general withdrawal by the Secretary of the Interior, under his supervisory powers, from all forms of entry, as power sites, to be available for public use in connection with future development; it was restored to entry by the Secretary April 7, 1909. This selection is still pending and has not been adjudicated.

Very respectfully,

H. H. SCHWARTZ,
Acting Assistant Commissioner.

WASHINGTON, D. C., August 21, 1909.

MY DEAR MR. CARR: Mr. Jeremiah O'Connor, a clerk in Division P, has been detailed to Mr. Sharp for field duty, and I am embracing the opportunity of sending you certain data and memoranda through him. Neither O'Connor nor Sharp has been advised as to the character of this matter. It will be delivered to you by Mr. Sharp.

Exhibit A contains copies of the correspondence between Special Agent Love and the office upon the matters charged in a letter received from Mr. Glavis. Glavis's letter was sent to the President at the time Love was appointed United States marshal. It is just possible that you may want to be advised of this correspondence before returning to this city.

Exhibit B contains the correspondence between Mr. Dennett, Mr. Glavis, and myself in reference to Mr. Glavis's statements that the commissioner has not been astute to detect the admissions of fraud supposed to have been implied in talks Dennett has had with Alaska claimants, and Glavis's statements in his letter to me that there are other matters of which I know nothing, etc. I submit the matter to your judgment whether the Secretary should consider it at this time. I have addressed a letter in this package to the Secretary.

Exhibit C is a copy of a letter by Commissioner Ballinger to the attorney of the Alaska Petroleum and Development Company, advising that a submitted contract was illegal. You will hardly want it, but it is sent along to show the general attitude of the then commissioner.

Exhibit D is a letter explanatory of my information as to the respective decisions by Pierce, and later by the Attorney-General construing the act of May 28, 1908—Alaska coal law. If Glavis is now playing in with the Forest Service, he has, of course, expressed to that service the same opinion on this matter that he has heretofore to me—that Pierce's decision was of the category that caused King John to exclaim: "It is the curse of kings to be attended by slaves that * * * on the winking of authority * * * understand a law." The jackals may try to work a newspaper story out of this matter during the conservation meeting in Seattle. I have been advised they had something to spring at that time. More likely it relates to some specific withdrawals or restorations.

Exhibit E is a complete statement of the Collins filing at Bozeman June 11, and the Northern Pacific Railway selection of 80 acres on May 5; the maps show just how much land Garfield thought necessary for power sites in these towns. I am having maps sent you as to all the power sites withdrawal in the Bozeman district. The map tells its own story.

Exhibit F is a complete copy of the department files on the Cunningham case.

Exhibit G is a complete copy of the Land Office files on the Cunningham case, and those files were studied for several days by A. C. Shaw, of the Forest Service, before the newspaper campaign thereon began. A few days after Shaw saw these files newspaper men began asking me about specific matters in the files, and it was tipped off to me that the United Press had a big Cunningham story it was to spring on a date. As you know, they sprung it, but badly crippled by being a day late. I have prepared this copy in duplicate, indexed it, and accompanied the papers with some

explanatory comment that the Secretary may better understand the matter if he cares to look at it at all. Because I do not know whether he cares to have this record I am sending it to you instead of to him. Overton Price, of the Forest Service, informed some newspaper man that record matter had been sent to Taft; I got that second-hand from Brown, of the Oregonian. In fact, Brown tells me this fellow Price had stated to the correspondent that Ballinger would not be permitted to resign, but "would be kicked out of the Cabinet in a few weeks." Price is such an impossible ass that the newspaper men did not take him seriously; however, when Brown gets back from his vacation we may get such proof that Price made this statement that his superior officers may act upon the same.

We are all keeping out of print as much as possible. The Star and Post seem with us; the Times, originally against us, is learning that there is nothing to the fuss; and the Herald is printing stuff for the Reclamation Service against the department.

When the Bozeman matter came up I searched for three days for the file before it was found; finally I had to issue the statement upon the advices in your Livingston telegram and a plat brought me by a dead one to Division R. To-day I had 20 men and women in Division O looking for the Bozeman tract book 22; after an hour's search I found it with an old fossil down in Division E—said he got it by mistake, and thought it was a Nebraska or other plat he wanted. I'll see to-morrow. The filing system is either on the bum or the people running it are; we are occasionally digging up departmental decisions rendered last March or April, finding them put away in the files without promulgation. I have ordered 10 additional men on my field roll for the file room; this will be three or four times the number of men formerly needed to run the files, and I have "me doots" whether it will help much. However, it is not within my jurisdiction, and I do not know what is to blame; maybe you do.

Mr. Dennett, complying with a wire from his wife, went direct from Denver to Atlantic City, and he has been laid up or out over there ever since with a bad case of nervousness and indigestion, but hopes to get back to Washington in about a week. He expected to come over a few days ago, but writes me that he had another bad attack Wednesday. I think he is letting the Glavis letter worry him; also I think he is gun shy. But I appreciate his position; had he fired Glavis off the bat that would have been water on the wheel of the Forest Service in their newspaper campaign; also it might have hampered us in properly getting at the evidence in the Cunningham cases when we come to a hearing. What he should have done was direct Glavis to order Kennedy and Stoner to the States as soon as they completed the field examination of the 33 Cunningham claims; on that basis we could have gone ahead with the original plan for an immediate hearing, for the field men could have returned by the time the stipulations were submitted to Washington and acted upon, the commissioner to take evidence designated, and then sent to Seattle to commence taking evidence. Instead Dennett consents to let Kennedy wander around Alaska examining some 900 claims, in any of which we will never have a hearing. We have plenty coal-mining engineers who could have gone to Alaska to complete the other examinations; then he sends Sheridan back to Denver, and the newspapers promptly say we are all afraid of Glavis and that Sheridan balked at performing some undisclosed wrong, etc.

I have returned Sheridan to Seattle to study these cases and the evidence and to get the preliminary steps, stipulations, etc., out of the way so we can go to trial as soon as Kennedy and Stoner get back. Sheridan wired me to-day that he was unable to consult with Glavis because the latter was in Spokane for "an indefinite period." This evening I wired Glavis to return to Seattle and consult with Sheridan at once. If he refuses, I shall make formal recommendation for his dismissal, and leave it up to Pierce whether this thing can go on. In view of Dennett's action in sending Sheridan to Denver I have not placed him in charge of the case, but have given him charge of the preparation of the case for trial and directed him to conduct the trial. Glavis is, of course, maneuvering to have the alleged lawyers in the Forest Service try the case, and it is my opinion we will come to a show down on this case as to whether section 1 of the act of February 1, 1905, has been permanently suspended. That act charges the Secretary of the Interior with the administration of all laws under which lands in national forests are "surveyed, prospected, entered, etc." I do not remember the wording of the act.

Underwood is on leave, Yelverton is in Denver on detail, and Marshall is on the desk in P. McGee is in Michigan, where his mother is dying. So you may know I am fairly busy. McPhaul is on Witten's desk, the latter being at Coeur d'Alene; otherwise I would have McPhaul act as assistant commissioner, and go upstairs altogether. As it is, I put in half a day each place. Young Parker goes on leave Monday, and I will have to rustle some one for his desk, or let it go empty. The judge offered to take

some of the divisions I have off my hands, but I will not unload anywhere under present circumstances.

I finally got through the department a request to the Attorney-General to bring suit for the money value of land where the patents were over six years old and suit to cancel thus barred. "Tried it on the dog" in a small case; if justice is of like mind on that little case, we will present them cases against the Smelter trust for about \$6,000,000 worth of Colorado coal land. (Has been presented three weeks.)

Burch has his old field force in action again, and a lot of old Michiganders of the oolitic age are musing over our Colorado cases with "additional field investigations," thereby keeping us out of results until Congress meets and we can show little accomplished, and that old fox can show much work "on hand" and need for man and money. Of course, I am patient, and know that other matters preclude too active a presentation of this trouble at this time.

I am feeling fine, so do not think from this letter that I have a grouch. I came very near getting a grouch to-day when Pierce ordered me not to take any "unfavorable action" on Siletz Indian "homesteads" until such time as Mr. Finney might return from his leave and digest a lot of papers and petitions, etc., sent to the judge and by him forwarded here. The thing I did not like was that Pierce refused to give us any written order in the premises. I told Judge Ballinger about three months ago that this Alaska business was badly loaded, and the judge told me some fellows got their ears so close to the ground that they could not hear anything. I tell you now that there is a worse load in this Siletz matter, and if it were a matter for my discretion I would not stop a day on the theory that any Oregonian will ever get a bill through Congress giving equitable relief and a \$15,000-each lot of homesteads to a lot of fellows who never lived on the land and claim it is not fit for a home. It is a mean man that won't sign a petition, and I know the judge will be deluged with petitions and briefs and hard-luck stories. The all-sufficient answer is that the United States never drafted any man or woman into making a homestead upon land the applicant thought he could not live on at the time he made oath that he took the land in "good faith for the purpose of establishing a home."

Mr. Lawer showed me a paragraph in one of the judge's letters wherein he referred to the miserable newspaper campaign being made against him, and wherein he said that it was all distressing, but he felt that in the end it must prove unavailing, etc. The paragraph spoke the words of a strong man, and it was good to read them in this atmosphere, where so much of rumor and prognostication is afloat.

Excuse the quality (and quantity) of this typewriting. Needless to say, I am not up on the art of running a new machine.

Very truly, yours,

(Signed) H. H. SCHWARTZ.

Senator ROOT. Perhaps to obviate such omissions in future it would be well, if any printed paper produced is to be put in the record, it shall be marked by the stenographer. .

The CHAIRMAN. Yes; it ought to be marked as an exhibit.

Mr. JAMES. I notice on page 80 of the hearing there is a mistake, and I want to ask Mr. Glavis about it. He says, "That telegram of July 4, which is referred to, is not in this record; that is Senate Document 248." I think that should be "January 4," because it is referring to a telegram of January 6, which is produced. Is that correct, Mr. Brandeis?

Mr. BRANDEIS. It should be January 4.

Mr. JAMES. I notice on page 42 what I consider a mistake. I would like to ask Mr. Glavis about it. This question is asked by Mr. Brandeis:

Mr. BRANDEIS. Did you write Assistant Commissioner Dennett in reply to that letter?

Mr. GLAVIS. I do not recall doing it, so I do not think I did, but I am not sure.

Mr. BRANDEIS. Did you receive any telegram from him?

Mr. GLAVIS. Yes. About November 7 or 8, I received a telegram calling me to report to Washington, D. C., immediately.

Is that correct?

Mr. GLAVIS. No, sir; it should be December 7 or 8.

Mr. JAMES. That is what I thought.

The CHAIRMAN. Have you put in your supplemental list of documents, Mr. Brandeis?

Mr. BRANDEIS. Yes; we have that here.

The CHAIRMAN. If you will give a copy to the stenographer, he will have it put into the record.

Mr. BRANDEIS. That will be marked by the stenographer as "No. 1" of this date.

Senator ROOT. Mark it and give a copy to the stenographer.

(The supplemental list is as follows:)

WASHINGTON, D. C., January 31, 1910.

KNUTE NELSON,

Chairman of Joint Investigation Committee.

SIR: Supplementing our request of January 27, 1910, we submit to you the following list of documents which we desire to have produced at this investigation:

(1) Original drafts of patents prepared in General Land Office in Cunningham coal cases in 1907 or 1908.

(2) Original lists in General Land Office sending Cunningham cases from the mineral division to the recorder's office.

(3) Letter H. K. Love, dated February 17, 1907, to General Land Office relating to creation of Chagech National Forest.

(4) Letter Forester to Commissioner General Land Office March 15, 1907, in same matter.

(5) Letter same to same, March 26, 1907, in same matter.

(6) Letter Commissioner General Land Office to Secretary Interior April 24, 1907, same matter.

(7) Letter Forester May 6, 1907, same matter.

(8) Letter Commissioner General Land Office to Secretary Interior submitting proclamation.

(9) Copies proclamations by the President July 23, 1907, September 18, 1907, and February 25, 1907, in same matter.

(10) All documents in Department of Interior relating to the Siletz Indian homesteads mentioned in letter Schwartz to Carr appearing on page 269 Senate Document 248.

(10) All correspondence and copies thereof between Wade Ellis, esq., and the Department of the Interior and any officer thereof between March 4, 1909, and January 1, 1910, and all correspondence and records pertaining to the matters mentioned in such correspondence, including correspondence of Messrs. Schwartz, Dennett, and Pierce.

(11) Report of hearings before the Public Lands Committee of the House in 1908 on the so-called "Cale bill."

(12) Record of testimony so far taken in Cunningham coal cases, including exhibits.

(13) List of stockholders of all different companies holding Alaska coal claims.

(14) Letter in Seattle land office (now or formerly) dated March 10, 1908, stating that the writer thinks Judge McKenzie drafted Cale bill, addressed to Hon. Oscar Foote.

(15) Letter (or copy) dated April 9, 1908, Clarence Cunningham to W. B. Heyburn, asking advice or assistance as to getting Alaska titles out of the Land Office.

(16) All correspondence and telegrams from July 1, 1909, to date passing between Messrs. Ballinger, Pierce, Schwartz, Dennett, McEniry, Colter, or any of them.

We shall present further requests for documents as occasion arises.

Very respectfully,

JOSEPH P. COTTON, Jr., *Counsel.*

The CHAIRMAN. Does any member of the committee desire to examine Mr. Glavis, ask him any questions?

Mr. GRAHAM. Mr. Glavis, on page 296 of the report of the testimony, in answer to a question by Mr. Denby, near the top of the page, you say:

I had some evidence which would lead me to believe that Mr. Dennett needed the support of all the official people he could get to become the Commissioner of the General Land Office; that is, to be reappointed.

What evidence did you refer to in this statement?

Mr. GLAVIS. Well, from what Mr. Schwartz told me in Seattle in June, 1909, and later during that summer—I think it was in August; yes, it was in August, 1909, he sent me some letters.

Mr. GRAHAM. "He" means who?

Mr. GLAVIS. Mr. Schwartz sent me some letters that indicated he was having the support of some Members of Congress for that purpose.

Mr. DENBY. I did not catch that.

The CHAIRMAN. Mr. Fletcher, would you like to make some inquiry?

Mr. DENBY. Mr. Chairman, will you pardon me just a moment? I did not understand that last answer. You say that you understood he had or had not the support of some Members of Congress?

Mr. GLAVIS. Mr. Schwartz sent me copy of letters that had been written—one of the letters was written by Chief of Field Division McEniry, of Denver, to Mr. Dennett, telling him about what Senator Guggenheim had done in his behalf; that is, indicated that he had seen the President, which was a protest against a man in Colorado who was a candidate for the appointment as Commissioner of the General Land Office.

Mr. DENBY. Is that what you referred to when you stated that you believed that Mr. Dennett's course was dictated by a desire to get support for his appointment as Commissioner of the General Land Office?

Mr. GLAVIS. That was among the things. Others were that a lot of coal claimants were prominent men, and their support would naturally do him a lot of good.

Mr. DENBY. The idea that was in your mind was that he would help the coal claimants to get their claims in order to get their support for his appointment as Commissioner of the General Land Office?

Mr. GLAVIS. Yes, sir; that is what I thought.

Mr. DENBY. Aid them in getting these fraudulent claims through?

Mr. GLAVIS. Yes; that, too.

Mr. GRAHAM. What particular coal claimants have you in mind now to whom that would apply?

Mr. GLAVIS. There were a great many of them that I have in mind; I do not know whether I could name them all offhand.

Mr. GRAHAM. Name some of them.

Mr. GLAVIS. Various Members of Congress involved——

Mr. GRAHAM. Give their names.

Mr. GLAVIS. Congressman McKinlay, of California; Kinkaid, of Nebraska; and Congressman McLachlan, of California. And this letter indicated that he had also supported Senator Guggenheim.

Mr. DENBY. Were any of these Members of Congress concerned with the Cunningham group?

Mr. GLAVIS. No, sir; they are all in the Green group. As to Senator Guggenheim, so far as I know he had nothing to do with any of the claims.

Mr. GRAHAM. Was he related, to your knowledge, to any of the parties interested in the Alaska coal field?

Mr. GLAVIS. Who?

Mr. GRAHAM. Senator Guggenheim.

Mr. GLAVIS. No, sir.

Mr. GRAHAM. The name Guggenheim is used publicly a good deal in connection with an attempt to be possessed of coal rights in Alaska and other rights there. Are the Guggenheims who are named in the public journals related to the Senator, and if so, how, if you know?

Mr. GLAVIS. I do not know.

Senator FLETCHER. Will you state if you know when the first locations were made of coal lands in Alaska and when did the first locations proceed to entry?

Mr. GLAVIS. I could not give the date of that. The Land Office records would give the exact dates.

Senator FLETCHER. Can you fix it approximately, about the year?

Mr. GLAVIS. Why, I think some of them, some of the first ones, were made in 1903, I think, or 1904, and then they went to entry; that is, entry when payment of the land was made, I think in 1907. I am not sure as to these dates.

Senator FLETCHER. Can you give that information as to the Cunningham group?

Mr. GLAVIS. Yes, sir. They were the first ones to go to entry.

Senator FLETCHER. Do you remember when the location—

The CHAIRMAN. Senator Fletcher, I want to call your attention in this connection—it may help you out—that there was no law really under which they could locate on coal claims in Alaska prior to the act of 1904. In 1900 in an Alaska act there was a provision that the general coal-land laws should apply to Alaska, but the general coal-land laws only related to surveyed lands, and there was no surveyed land in Alaska, so that it was a dead letter, and there was no law for entries until 1904 that was effective.

Senator FLETCHER. I understand.

The CHAIRMAN. Excuse me for interrupting.

Senator FLETCHER. I understand, Mr. Chairman. I am just trying to get a sort of beginning point with reference to these lands. I will ask you, Mr. Glavis, about how many locations were there, covering about how many acres, prior to November 12, 1906?

Mr. GLAVIS. Approximately 900 filings and locations, amounting to something over 100,000 acres, I should say.

Senator FLETCHER. Now, about how many of these were, according to your views, fraudulent?

Mr. GLAVIS. Oh, about 800, entirely coal.

Senator FLETCHER. Covering how many acres?

Mr. GLAVIS. Oh, about 80,000 or 90,000 acres; it may be more. I think I am putting it lower than it is, but I am not sure.

Senator FLETCHER. Was the Cunningham group included in these?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Did not President Roosevelt withdraw all the coal lands in Alaska from public entry on November 12, 1906?

Mr. GLAVIS. Yes, sir; I think that was the date.

Senator FLETCHER. That withdrawal and the executive order of July 2, 1908, creating the national forest left the Cunningham lands under the jurisdiction of the Land Office, did it not?

Mr. GLAVIS. Yes, sir; to a certain extent. We had an arrangement by which we cooperated with the Forest Service in the investigation of claims within the forest reserves.

The CHAIRMAN. Who made that arrangement?

Mr. GLAVIS. The last order, I think, was March 2, 1909; Secretary Garfield and Secretary Wilson, I think.

The CHAIRMAN. Did that pertain to coal lands in Alaska?

Mr. GLAVIS. It referred to all claims within the national forest.

Senator FLETCHER. Do I understand you to claim that the Land Office ordered the Cunningham claims to be patented without due investigation when Commissioner Ballinger knew that they were under suspicion?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Special Agent Love first reported the claims fraudulent in 1905, did he not?

Mr. GLAVIS. Why, I do not know as to that; I do not recall the report now.

Senator FLETCHER. You know, as a fact, that Special Agent Love was the first to make a report to that effect with reference to these lands?

Mr. GLAVIS. Yes, sir. He was the first agent that reported to the office about the coal claims there.

Senator FLETCHER. His report is on file, and I think the records will show it was October, 1905. What else did Special Agent Love do in connection with that matter?

Mr. GLAVIS. He got some affidavits from the Cunningham group.

Senator FLETCHER. About how many, do you know?

Mr. GLAVIS. No; I do not know. I think he got one from each one. That was in 1906 or 1907, when he did that.

Senator FLETCHER. Did he do anything else in connection with these coal-land claims?

Mr. GLAVIS. He assisted Special Agent H. T. Jones during the summer of 1907.

Senator FLETCHER. Do you know what that amounted to?

Mr. GLAVIS. No, sir; I do not.

Senator FLETCHER. How do you account for Love's report—favorable report on the Cunningham claims of August 2, 1907?

Mr. GLAVIS. I did not consider that a favorable report.

Senator FLETCHER. It was so considered, was it not?

Mr. GLAVIS. Yes, sir; the recommendation was favorable, but the substance of the report called attention to the possibility of fraud.

Senator FLETCHER. Was it not on that report that the lands were ordered clear listed?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Had Special Agent Love become a candidate for the marshalship by that time?

Mr. GLAVIS. Yes, sir. That is what I heard. I do not know definitely when he announced. It was talked then.

Senator FLETCHER. Do you know that he was appointed for United States marshal in Alaska?

Mr. GLAVIS. Yes, sir; he was appointed.

Senator FLETCHER. What law did Commissioner Ballinger urge Congress to pass and what effect would that law have had on the Alaska coal claims?

Mr. GLAVIS. Why, it was the bill—he appeared before the committee in what was known as the Cale bill, and if that had passed in the form in which it was first offered it would have validated all the coal claims; they could have all come in under that act.

Senator FLETCHER. Did he favor the Cale bill before Congress?

Mr. GLAVIS. The testimony that is read, which has been printed, shows his having testified in favor of it; yes, sir.

Senator FLETCHER. That bill, or a bill that did pass Congress in 1907, did it not?

Mr. GLAVIS. In 1908, I think it was.

Senator FLETCHER. Did not any act pass in 1907 with respect to the Alaska coal lands?

Mr. GLAVIS. No, sir.

Senator FLETCHER. And was vetoed by the President?

Mr. GLAVIS. I do not know about that one. I have heard about it, but I do not know about that.

Senator FLETCHER. I think the bill did pass Congress in 1907, and it was vetoed by President Roosevelt; but under the Cale bill, you state that it would have made the entries which were at that time fraudulent, valid, if it had passed.

Mr. GLAVIS. Yes, sir; if they had taken the benefit of that act.

Senator FLETCHER. How many acres could have been patented of the locations already then made under such a law?

Mr. GLAVIS. How many acres could have been patented?

Senator FLETCHER. Yes.

Mr. GLAVIS. All that had been filed could have come under that, and have secured patent.

The CHAIRMAN. Senator Fletcher, will you let me ask a question right there?

Senator FLETCHER. Certainly, Mr. Chairman.

The CHAIRMAN. No claims could have been initiated after the order of withdrawal, could they, while that order was in force—after the order of withdrawal of 1906?

Senator FLETCHER. I had reference to the claims based on entries already made prior to 1907.

The CHAIRMAN. Oh, I understand.

Senator FLETCHER. Do we understand, Mr. Glavis, that your connection with the Alaska coal claims began in the fall of 1907, and that in December, 1907, you conferred with Commissioner Ballinger in Washington about them?

Mr. GLAVIS. No, sir; my real connection with the Alaska coal cases—that is, when I was given charge of the Alaska coal cases—which was in November, 1907, I conferred with Judge Ballinger.

Senator FLETCHER. It began at that time?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Now, did you mention to him at that time that the claimant had told you that Commissioner Ballinger had advised him to make no statement with reference to the claims?

Mr. GLAVIS. Yes, sir; that was Clark Davis's statement. I do not think it said advise him but advise them.

Senator FLETCHER. What did Mr. Ballinger say with reference to that?

Mr. GLAVIS. I stated that in my report, and he did not answer that part of it.

Senator FLETCHER. He neither denied nor admitted, then, that he had made any such statement as that?

Mr. GLAVIS. No, sir; he never answered that part of my report.

Senator FLETCHER. I am speaking with reference to your conversation with him. You say he mentioned it. I am asking you now what he said at the time when you mentioned it to him.

Mr. GLAVIS. I did not mention it to him at the time I talked with him in December, but what he said at that time in telling me to go ahead, that he wanted to put a stop to these rumors that the people would get their coal claims, I concluded from that he included the Clark Davis statement. He did not mention it specifically at all.

Senator FLETCHER. How do you know about the verbal instructions by Mr. Ballinger to Mr. Jones to make only a preliminary investigation?

Mr. GLAVIS. I do not catch the question.

Senator FLETCHER. About the verbal instructions from Mr. Ballinger to Mr. Jones to make only a preliminary investigation.

Mr. GLAVIS. How did we construe those?

Senator FLETCHER. No; how do you know about verbal instructions Mr. Ballinger gave Mr. Jones?

Mr. GLAVIS. Why, Mr. Jones made a report to me on November 2, 1907, setting that up in that report.

Senator FLETCHER. You did not hear the conversation, did you?

Mr. GLAVIS. No, sir.

Senator FLETCHER. You merely got that from Mr. Jones's report?

Mr. GLAVIS. That is all.

Senator FLETCHER. Did you ever mention that to Mr. Ballinger in any way so as to have any further information on the subject?

Mr. GLAVIS. No, sir.

Senator FLETCHER. When did you first learn that the Cunningham claims had been proved for patent on the Love report?

Mr. GLAVIS. When I received notice to that effect from the Assistant Commissioner of the General Land Office. That letter was dated, I think, January 7, 1908. I am not sure. It has been introduced in evidence.

Senator FLETCHER. If patents had issued, how many acres of coal land would have gone to the Cunningham group?

Mr. GLAVIS. About 5,200 acres.

Senator FLETCHER. Now, you protested, and the order clear listing those lands was revoked, and you resumed work on the claims about March 1, 1908, as I recall?

Mr. GLAVIS. Yes, sir; that is, actual work.

Senator FLETCHER. In May, 1908, were you ordered by Mr. Dennett to other work?

Mr. GLAVIS. Yes, sir; on May 2, 1908.

Senator FLETCHER. In October, 1908, were you ordered back to the Alaska work?

Mr. GLAVIS. Yes, sir; to the Alaska coal cases.

Senator FLETCHER. Now, if the Pierce construction of the law of 1908—of May, 1909—had been submitted and your report had been made conforming thereto, as ordered by Mr. Dennett on May 24, what would have resulted?

Mr. GLAVIS. I did not make a report and file it dated May 26, 1909.

Mr. JAMES. And withdrew it afterwards?

Senator FLETCHER. You withdrew it?

Mr. GLAVIS. Yes, sir. Why, that would have passed to patent all of the Alaska claims that wanted to take the benefit of that opinion.

Senator FLETCHER. Approximately 100,000 acres?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Am I right that you were requested to withdraw that report?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. By whom?

Mr. GLAVIS. By Secretary Ballinger.

Senator FLETCHER. Do you know whether or not there is any precedent in the history of the Land Office for requiring the evidence in the Cunningham cases to be submitted to the commissioner without having the Alaska land office pass on the claims first?

Mr. GLAVIS. No, sir; not the general procedure, and I never heard of a precedent for it before.

Senator FLETCHER. Is there any formal or published rule or regulation of the Land Office on the subject?

Mr. GLAVIS. Yes, sir; they have rules of practice which govern hearings.

Senator FLETCHER. Can you refer us to any rule or regulation that bears directly upon that subject—can you tell us what it is or where we can find it?

Mr. GLAVIS. No, sir; the rules of practice call for hearings first before the land office, and then it goes to the commissioner.

Mr. BRANDEIS. You mean before the local land office; before the register and receiver?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Now, where would the cases go if appeal were taken from Commissioner Dennett's decision? Supposing he had gone on and had these hearings and rendered his decision in all the cases and appeal had been taken from his decision, where would that lie?

Mr. GLAVIS. The next appeal is to the Secretary of the Interior. That is the last appeal.

Senator FLETCHER. Now, if Secretary Ballinger had felt himself disqualified, who is the next officer to pass on the claim?

Mr. GRAHAM. After Dennett.

Mr. GLAVIS. The next officer in charge in the Interior Department, after Secretary Ballinger, is Assistant Secretary Pierce, I think.

Senator FLETCHER. That is the same Pierce who wrote the opinion construing the law of 1908 favorable to entrymen, as you claim?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Now, state whether or not it was this situation that had prompted you to take the matter to the President in September, 1909, instead of going on and collecting the evidence for the hearings in October and waiting for the commissioner's decision?

Mr. GLAVIS. Well, all the facts that I have testified to, together, is what influenced me in going to the President; not that one alone.

Senator FLETCHER. Had that any influence or bearing on your course?

Mr. GLAVIS. That influenced me some?

Senator FLETCHER. What is the status of all the other claims besides the Cunningham group, as far as you know now?

Mr. GLAVIS. At this time?

Senator FLETCHER. Yes.

Mr. GLAVIS. Why, I do not know what they are now—the last one before I left the service. They had not ordered any hearings on the other cases. I do not know what they have done since.

Senator FLETCHER. What did Mr. Ballinger have to do with the Cunningham affidavit of September 4, 1908?

Mr. GLAVIS. That is the one he prepared for Cunningham?

Senator FLETCHER. Yes. I am asking what he had to do with it, if you know. You say he prepared it?

Mr. GLAVIS. I do not know from any knowledge whether he prepared it or not.

Senator FLETCHER. Have you any reason for believing that he prepared it, or presented it?

Mr. GLAVIS. The original affidavit was prepared; the backing had the law firm of Judge Ballinger on it; that is practically all, and also the statement that Schwartz made to me.

Senator FLETCHER. Now, going back a little to October, 1908, in Portland, Oreg, when you say Mr. Ballinger requested or advised or suggested to you to discontinue the investigation of the Alaska coal claims because he wanted to raise funds for political campaign purposes, and some people would not give for that, he being disturbed by such investigation, please state the precise conversation that was had there?

Mr. GLAVIS. He did not say discontinue, because I had not resumed my investigation at that time.

Senator FLETCHER. Just state the conversation; that is what I want to get clear in my mind, as to your statement about that.

Mr. GLAVIS. I told Judge Ballinger first that I had been directed to take up the investigation of the Alaska coal cases again, and he said: "I wish you would not do that until after the election, because H. C. Henley and C. J. Smith, for instance, heretofore had liberally contributed to the campaign fund, and they were mad about the patents not having issued," and he said he was having a very hard time all over the country to get campaign funds.

Senator FLETCHER. Was anyone present during that conversation?

Mr. GLAVIS. No, sir; that was in the lobby of the Portland Hotel. We were sitting in the hotel and talking, all the afternoon—that is, about an hour.

Senator FLETCHER. Did he mention any others as being concerned?

Mr. GLAVIS. I am not sure whether he mentioned any more. I do not think he did.

Senator FLETCHER. Do you know whether any of those he mentioned contributed to the campaign funds afterwards?

Mr. GLAVIS. No, sir; I do not.

Senator FLETCHER. You say in your report, page 61 of this Senate Document 248, that Mr. Ballinger had personal friends interested; can you name them? You make the statement on page 61: "A number of these men are prominent in the State of Washington, and many of them are personal friends of Mr. Ballinger."

Mr. GLAVIS. Do you want me to name those?

Senator FLETCHER. Yes; if you can name those to whom you refer to in that connection.

Mr. GLAVIS. There was H. C. Henley, Miles C. Moore, C. J. Smith, and—well, then there was H. R. Harriman—he is not in the Cunningham group, though. The first I mentioned are in the Cunningham group.

Senator FLETCHER. I suppose you have reference there to all of these Alaska coal claims.

Mr. GLAVIS. I do not remember that. Then there is—I might say there are quite a number more. If I had the list of them I could pick them out, but I do not just recall the names.

Mr. BRANDEIS. There is a list of these claims connected with the letter of August 13—that is the Jones report of August 13, 1907, appearing on page 453 of the Senate Document.

Mr. GLAVIS. And there is Harry White. He is now in Los Angeles. He used to live up at Seattle.

Senator FLETCHER. Those named as claimants were not particularly referred to in that connection, but rather those who acted as agents or the attorneys for them, were they not?

Mr. GLAVIS. No, sir; I had in mind the claimants.

Senator FLETCHER. The claimants themselves?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Then, on page 13 of Senate Document 248, you refer to one Cornelius Christopher. Can you tell us who he was, and where he lived?

Mr. GLAVIS. Christopher lived up in Seattle at the time. He was the agent for quite a number of coal claimants, and we called it the Christopher group. I mentioned that in my report to the President as being along the lines of the evidence I had secured. I did not have a copy of the Cunningham report of March, 1909, because Mr. Hoyt left that with the Attorney-General. I did not have another copy made from the original. That was on file in Washington.

Senator FLETCHER. Now, in this affidavit of J. W. Reiter, referred to on page 13 of Senate Document 248, he says:

After I had filed, Cornelius Christopher came into the district and I went to work for them. While working for him I gave him an option to buy my right in the claim, which was dated June 11, 1904; expired October 1, 1904, but he let this option expire without purchasing. Some time afterward I came to Seattle. I sold him the claim in the form of a quitclaim deed, the consideration in the deed being \$1. He paid me \$150 for it.

What had that cost Reiter?

Mr. GLAVIS. I do not know.

Senator FLETCHER. Do you remember the amount or the extent of his claim?

Mr. GLAVIS. No; I do not. I think it was about 160 acres. All the claims, in fact, in the Alaska district were for 160 acres each. Of course, there were some fractional claims that did not have as much of an acreage, and I did not take that affidavit myself; one of the special agents took that.

Senator FLETCHER. Do you know what he would have been obliged to expend to make his entry of 160 acres?

Mr. GLAVIS. To make the entry he would have had to pay \$1,600 but he had not made an entry on the land. He had only made a filing.

Senator FLETCHER. A filing?

Mr. GLAVIS. Yes. The filing, I think, cost \$10, and of course there were the expenses incident to the location.

Senator FLETCHER. Do you know anything of the history of the act of 1904?

Mr. GLAVIS. I have read something about it, but that was from the records of Congress.

Senator FLETCHER. You had no part in the preparation or the consideration or the origin of it, or anything of that sort—nothing of your personal knowledge in connection with it?

Mr. GLAVIS. No, sir; I did not know anything about the Alaska cases then.

Senator FLETCHER. That was the act of 1904. How about the act of 1908?

Mr. GLAVIS. I do not know anything further than what the record shows in that respect. I was not here when that was passed.

Senator FLETCHER. I was going to ask whether you knew who prepared the antitrust paragraph of that act of 1908, section 3?

Mr. GLAVIS. No, sir; I do not know of my own knowledge, except what the bill shows.

Senator FLETCHER. Now turn to pages 78 and 79 of Senate Document 248, and upon page 78, tell us what you did with reference to taking the Alaska claims up with the Forest Service?

Mr. GLAVIS. I sent a telegram to Mr. A. C. Shaw, the law officer of the Forest Service, Washington, D. C.

Senator FLETCHER. When was that?

Mr. GLAVIS. On July 16, 1909. That was the first time that I took the matter up with the Forestry Service in any way. I never in the past consulted them in any way about the Alaska coal cases.

Senator FLETCHER. Was it incumbent upon you to first consult your superior officers before sending a telegram of that sort?

Mr. GLAVIS. No, sir; I do not think so. In fact, we had not been in the habit of doing that under the agreement entered into between Secretary Garfield and Secretary Wilson—and the letter of March 22, 1909, was the result of that agreement—did not necessarily require us to take that action.

Senator FLETCHER. Why did you send that telegram?

Mr. GLAVIS. Because I wanted to get the hearings postponed in the Cunningham cases.

Senator FLETCHER. What followed after that—to what extent did the Forestry Service intervene?

Mr. GLAVIS. Well, I think the next day Mr. Shaw wired me that he could not come, but that he would send a law officer of the Forestry Service from Portland up to Seattle to confer with me, and that law officer came up and went over the papers and made a report to the Forestry Service.

The CHAIRMAN. Who was that law officer?

Mr. GLAVIS. His name was Mr. Pierce. I do not know his initials now; I forget them. He was at that time the district law officer of the Forestry Service at Portland, Oreg.

Senator FLETCHER. When was that, if you remember?

Mr. GLAVIS. That was about July 18 or 20, somewhere along that time.

Senator FLETCHER. Just go ahead and state what else was done.

Mr. GLAVIS. He went over the papers and recommended to the Forester that a continuance be secured until a field examination could be made.

Senator FLETCHER. What else did you do?

Mr. GLAVIS. In reference to the Forestry Service?

Senator FLETCHER. Yes.

Mr. GLAVIS. Well, I do not think I did anything then officially with the Forestry Service. I wrote Mr. Shaw a telegram, but that was personal after that.

Senator FLETCHER. You saw the Chief Forester, did you not?

Mr. GLAVIS. Oh, that was along about August 5, somewhere in there; or August 9, it might have been. My daily reports show the day I saw the Forester. I met him at Spokane, Wash., and explained the situation to him. I explained also to ex-Governor Pardee, of California, and told him of it, and I went over the evidence I had procured and the facts with both Mr. Pinchot and Mr. Pardee, and as a result of that, I told him that I thought of making the whole thing public and get out; and as a result of that, however, Mr. Pinchot thought it was such a serious matter that the facts ought to be laid before the President, and he gave me a couple of letters of introduction to the President, and the next day I started East to see the President.

Senator FLETCHER. Referring to your letter to the commissioner of July 8, 1909, page 525, of this Senate document 248, did you get the copies referred to in the last paragraph of that letter—it is the last paragraph on page 526.

Mr. GLAVIS. No, sir; they never sent me those letters.

Senator FLETCHER. Did you ask Mr. Dennett at any time by wire or letter or orally if he had any information tending to show fraud in connection with any of these entries?

Mr. GLAVIS. Yes, sir; I sent him a telegram mentioned in this record here.

Senator FLETCHER. Did you get a reply to that?

Mr. GLAVIS. Yes, sir; it is mentioned in the record.

Senator FLETCHER. Is his reply set out?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. What does he reply?

Mr. GLAVIS. He said that no admissions had been made to him.

Senator FLETCHER. Do you know Donald R. McKenzie?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Who is he, and what relation did he sustain to Mr. Ballinger or Mr. Dennett?

Mr. GLAVIS. He was very friendly with them. I do not know whether it is Donald R. or Donald A. McKenzie, the one I have in mind. I am not sure of his middle initial. It is the same McKenzie that followed Mr. Ballinger's testimony in the Cale bill at that hearing—the one that I have in mind.

Senator FLETCHER. Did you have any conversation with him on June 26, 1909, in the presence of Jones in Seattle regarding the Alaska coal claims?

Mr. GLAVIS. Well, it was about that time; I do not know the date now. He made an affidavit about that conversation. We also took his statement. It was about June 26.

The CHAIRMAN. You mean McKenzie's statement?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Is it in the record here?

Mr. GLAVIS. I do not think it is. He is interested in the—

Senator FLETCHER. Whose statement is this?

Mr. GLAVIS. He is interested in the Doughton group of coal claims, I think, and another group of coal claims up there. He had made

some kind of a report on them. I do not think it would be in this statement.

Senator FLETCHER. What statement did he make to you and Mr. Jones?

Mr. GLAVIS. Well, after we got through taking his statement, and the stenographer had stopped taking notes, he told us about Mr. Garfield's antagonism against the Alaska coal claims, and said that—we tried to use his own words, but I do not know whether I can use his words now or not.

Senator FLETCHER. Just give us the substance of it.

Mr. GLAVIS. Well, he said that that was one of the reasons why he was not Secretary of the Interior, because of his antagonism and action in the Alaska coal matters. That was about the substance of it.

Mr. DENBY. Who said that, Mr. Glavis?

Mr. GLAVIS. This Donald McKenzie.

The CHAIRMAN. What did he say? I did not quite understand you.

Mr. GLAVIS. He said because of his views on the Alaska coal laws, and his antagonism to the Alaska coal claims, was one of the reasons why he was not in the Cabinet under President Taft.

Mr. GRAHAM. In what department?

Mr. GLAVIS. As Secretary of the Interior.

Mr. OLMSTED. Did he state what the other reasons were?

Mr. GLAVIS. No, sir; I think he was only familiar with the Alaska coal-land cases.

Mr. MADISON. To whom did he make that statement?

Mr. GLAVIS. To Special Agent H. T. Jones and myself, and we made an affidavit about it.

Senator ROOT. Does that contain anything else besides the statements or his reason why Mr. Garfield was not in the Cabinet?

Mr. GLAVIS. No; this affidavit that Mr. Jones and I made just covered practically that matter alone.

Senator ROOT. Was that all the affidavit contained?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Why did you take an affidavit containing what this McKenzie said as to the reason why anyone was not in President Taft's Cabinet?

Mr. GLAVIS. Well, we thought it would be a thing worth remembering, in case we had to further investigate these coal cases, and if put on the stand, because in that statement he said he had explained about the violation of the coal-land laws; that he had violated the law as to having an agreement, and that was the reason why they were antagonistic.

Senator ROOT. When was it that you took this affidavit?

Mr. GLAVIS. This is not an affidavit that Judge McKenzie made himself; it is an affidavit that Special Agent Jones and myself made.

Senator ROOT. This is an affidavit you made about what Mr. McKenzie said to you?

Mr. GLAVIS. Yes, sir; to us.

Senator ROOT. When did you make that affidavit?

Mr. GLAVIS. I think that was along in September.

Senator ROOT. Of what year?

Mr. GLAVIS. 1909.

Senator ROOT. After you went to the President?

Mr. GLAVIS. Oh, I had gone to the President.

The CHAIRMAN. What became of that affidavit—where is it?

Mr. GLAVIS. I think it is on file in the land office—in the Seattle office.

The CHAIRMAN. Have you a copy of it?

Mr. GLAVIS. No, sir; it might have been among some of the papers I sent to the Forestry Service.

The CHAIRMAN. Did you send some papers that you had in your office at Seattle there pertaining to your coal-land investigations to the Forestry Service?

Mr. GLAVIS. I sent copies of them for their use in their investigations of coal cases.

The CHAIRMAN. And what did you do with the original papers?

Mr. GLAVIS. The original papers are in Seattle.

The CHAIRMAN. What papers did you send the Forestry Service copies of?

Mr. GLAVIS. I did not list them; it was all the affidavits I had secured.

The CHAIRMAN. In all these cases?

Mr. GLAVIS. Yes, sir; in all these cases, and copies of my reports.

The CHAIRMAN. Did you not know that these affidavits that you had taken in these land investigations when you were investigating frauds like that are confidential and not open to anybody else outside of the department?

Mr. GLAVIS. Yes, sir. I sent them for official use of the Forestry Service.

The CHAIRMAN. You took those as an official of the Land Office, did you not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And was it not your duty to send them to the General Land Office?

Mr. GLAVIS. Copies of them; yes, sir.

The CHAIRMAN. And did you not know that these affidavits that you took are confidential, and do not belong to anybody but the Land Office to examine?

Mr. GLAVIS. No, sir. They are confidential, but it has always been our practice heretofore, where the Forestry Service was cooperating with the General Land Office in the investigation of cases in the forest reserves, to furnish them with copies of our reports and affidavits, and to mutually assist each other in these affidavits.

The CHAIRMAN. These fraud affidavits?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. That has been the practice?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Mr. Glavis, was this affidavit made by you when you were still an agent of the Interior Department?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Before whom did you make it; before what officer?

Mr. GLAVIS. It was made before one of the special agents in the office.

Senator ROOT. Did Mr. Love or Mr. Jones—

Mr. GLAVIS (interrupting). Mr. Jones.

Senator ROOT. Did Mr. Jones also make an affidavit?

Mr. GLAVIS. He made the same affidavit.

Senator ROOT. He was also in the Interior Department?

Mr. GLAVIS. Yes, sir.

Senator ROOT. And where was it that you made it?

Mr. GLAVIS. In Seattle, Washington.

Senator ROOT. And you do not recall the officer before whom you made it?

Mr. GLAVIS. No; it was before one of the agents, I am pretty sure of that.

Senator ROOT. By whose request did you make it?

Mr. GLAVIS. No one.

Senator ROOT. And you say the affidavit contained nothing except what you have stated?

Mr. GLAVIS. I think that was all.

Senator ROOT. That was the only subject?

Mr. GLAVIS. That was the subject, and it referred to the coal cases.

Senator ROOT. Were you through?

Mr. GLAVIS. I was going to say that it covers about a page or a page and a half. It had something about the coal cases too; it must have had.

Senator ROOT. What else did it have about the coal cases?

Mr. GLAVIS. I do not remember. I think it had his admissions that he had some kind of an unlawful understanding.

Senator ROOT. You had already been to the President with this matter which is summarized in this Senate Document 248?

Mr. GLAVIS. Yes, sir.

Senator ROOT. And it was then pending before him, was it; had he decided it?

Mr. GLAVIS. It was just about that time; I do not think he had decided it; I am not sure whether he had or not.

Senator ROOT. Now, tell me why you were making an affidavit at that time, when this matter was pending before the President and you were in the public service, containing a statement of what Mr. McKenzie said as to President Taft's reason for making his Cabinet.

Mr. GLAVIS. I thought it might be of interest to President Taft if I had another opportunity to speak to him.

Senator ROOT. Did you send the affidavit to him?

Mr. GLAVIS. No, sir; I did not. A few days after that I received notice of my dismissal. I do not know how long it was.

Senator ROOT. Did you intend to send it to him?

Mr. GLAVIS. I had that in mind.

Senator ROOT. Did you intend to send it to him?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Why did you not?

Mr. GLAVIS. I was going to show it to him in Seattle when he got there.

Senator ROOT. Why did you not send it to him?

Mr. GLAVIS. Because I intended to show it to him in Seattle when he arrived there.

Senator ROOT. When President Taft arrived there?

Mr. GLAVIS. Yes, sir.

Senator ROOT. You did send it where?

Mr. GLAVIS. I know I sent it to the Forestry Service and also left a copy in the office at Seattle.

Senator ROOT. Did you have any other object than to show it to President Taft in making it?

Mr. GLAVIS. Well, I had always felt friendly toward Mr. Garfield, and I thought I would like him to have known it.

Senator ROOT. Did you send it to him?

Mr. GLAVIS. No; I did not send it to him.

Senator ROOT. Was there any other motive that you had in making this affidavit?

Mr. GLAVIS. I had no other motive.

Senator ROOT. Why did you think it advisable to send it in the form of an affidavit?

Mr. GLAVIS. Because I thought that anyone reading it would give it more credence than otherwise.

Senator ROOT. You thought President Taft would give it more credence?

Mr. GLAVIS. Yes, sir.

Senator ROOT. And Mr. Garfield?

Mr. GLAVIS. Yes, sir; and Mr. Garfield also.

Senator ROOT. Mr. Chairman, has this witness been sworn?

The CHAIRMAN. Oh, yes.

Senator ROOT. Do you testify that you did not make that affidavit for the purpose of making an attack on President Taft's administration?

Mr. GLAVIS. Yes, sir; I do.

Senator ROOT. You swear you did not?

Mr. GLAVIS. I swear I did not.

Senator ROOT. You swear that you made that affidavit for the purpose of aiding President Taft?

Mr. GLAVIS. I do not know whether it would have aided him or not, but I had no motive in mind.

Senator ROOT. You have just said that you thought he would like to know.

Mr. GLAVIS. Yes, sir.

Senator ROOT. And you swear that was your reason, and your only reason?

Mr. GLAVIS. That, as I have said, I wanted to let Mr. Garfield know.

Mr. JAMES. You have set out the whole conversation in this affidavit, have you?

Mr. GLAVIS. Well, it is about a page. I would not say—oh, you mean in the affidavit?

Mr. JAMES. Yes.

Mr. GLAVIS. Yes; we do.

Mr. JAMES. It was no opinion of yours as to why he was not in there, was it?

Mr. GLAVIS. No, sir.

Mr. JAMES. So that if there is any attack upon President Taft it is made by this gentleman in his conversation which you were repeating in the affidavit—is that it?

Mr. GLAVIS. Well, he did not give it any intent to attack President Taft.

Mr. JAMES. I say, if there was any attack, he was the man who was making it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Has that affidavit ever been made public?

Mr. GLAVIS. No, sir.

Mr. OLMSTED. Mr. Glavis, did you retain a copy of that affidavit?

Mr. GLAVIS. After leaving the service, you mean?

Mr. OLMSTED. After making it. When you made it and forwarded it, you sent one copy to the land office in Seattle, or Juneau, or anywhere else?

Mr. GLAVIS. No; I did not forward it; that was the copy I left there; that was in my office in Seattle.

Mr. OLMSTED. And one copy to the Forestry Service?

Mr. GLAVIS. Yes; one or two.

Mr. OLMSTED. Was the one forwarded to the Forestry Service addressed—did it go by mail, or was it personally delivered?

Mr. GLAVIS. It went by mail.

Mr. OLMSTED. To whom was it addressed?

Mr. GLAVIS. I think that all my correspondence transmitting official documents was transmitted to just the Forester, United States Forestry Service, Washington, D. C.

Mr. OLMSTED. That accounts for two copies. Did you have any other copy?

Mr. GLAVIS. I do not know how many copies were made, now.

Mr. OLMSTED. Did you retain a copy?

Mr. GLAVIS. After leaving the service? No, sir.

Mr. OLMSTED. What did you do with it?

Mr. GLAVIS. That was the copy I left in the office; in my office in Seattle.

Mr. OLMSTED. In your office in Seattle—who has charge of that office now?

Mr. GLAVIS. The chief of field division, by the name of Andrew Christianity.

Mr. OLMSTED. Has he that affidavit now, or did he have it?

Mr. GLAVIS. Why, he should have it there with the files if he has not sent it on to Washington.

Mr. OLMSTED. And you retained no copy whatever?

Mr. GLAVIS. No, sir.

Mr. OLMSTED. When did you leave that copy with your successor in office at Seattle.

Mr. GLAVIS. I left it when I left all the records there—the day I left the service entirely; I think that was September 19, 1909; I am not sure about that.

Mr. OLMSTED. What date was it that you forwarded the copy to the Forestry Department?

Mr. GLAVIS. Oh, I do not remember that; I think that was the same date that I left the Forestry Service, but I may be mistaken about that.

Mr. OLMSTED. That is the affidavit in which Mr. McKenzie explains why he was not in the Cabinet?

Senator FLETCHER. No; I did not understand that. Do you understand that question, Mr. Glavis?

Mr. GLAVIS. No. Why McKenzie was not in the Cabinet; I understand.

Senator FLETCHER. Yes.

Mr. GLAVIS. The affidavit was, why Mr. Garfield was not in the Cabinet.

Mr. OLMSTED. I understood you to say that Mr. McKenzie said he could have been in the Cabinet if—

Mr. GLAVIS. No, sir; I meant Mr. Garfield.

Mr. OLMSTED. I want to ask you a question upon a different subject.

The CHAIRMAN. Let me see if I understand you, Mr. Glavis. I got the same impression. Then, as I understand you, Mr. Glavis, the effect of this affidavit was that Mr. McKenzie told you—Donald A. McKenzie—that Mr. Garfield would have been in the Cabinet if he had been all right on these claims?

Mr. GLAVIS. That is what he substantially stated.

The CHAIRMAN. Where is the original affidavit?

Mr. GLAVIS. That is up in Seattle, I think.

The CHAIRMAN. Did you leave that affidavit in the office?

Mr. GLAVIS. I think that was the one. We signed each one—copies were made, and we signed each one of them.

Mr. GRAHAM. Two originals were made?

Mr. GLAVIS. There were a number of originals.

The CHAIRMAN. You signed all the copies?

Mr. GLAVIS. Yes, sir. One was the same as the other; as a matter of fact they were the same, except one was a carbon of the other.

The CHAIRMAN. Are there any papers, reports, affidavits, or memoranda that you had while you were in the service or had anything to do with that you kept copies of that have not been introduced here so far—that have not been introduced or are not found in this report here?

Mr. GLAVIS. I did not take any.

The CHAIRMAN. I mean, have you any?

Mr. GLAVIS. No, sir.

Mr. MADISON. Who is this man Donald A. McKenzie?

Mr. GLAVIS. Well, he is interested in the Dalton group of coal claims in Alaska, and he is known among the agents in the service as a lobbyist down here in Washington part of each winter.

Mr. MADISON. Where does he live—where is his home?

Mr. GLAVIS. He lives up in Alaska in the summer time.

Mr. MADISON. At what place?

Mr. GLAVIS. I am trying to think. He has got a town site up there; that is at Nelson, the town of Nelson. I think he lives there now. In the winter time he is here.

The CHAIRMAN. I suppose this committee did not know there was a town site named after me up there.

Mr. MADISON. He is the principal owner of the town of Nelson, is he?

Mr. GLAVIS. He told me about it. I think he and ex-Governor McGraw are the principal owners. That is the way I always understood it.

Mr. MADISON. Then he makes his home there only during the summer, and is in Washington during the sessions of Congress in the winter?

Mr. GLAVIS. He has been the last four or five years; I do not know whether he has come down this year or not.

Mr. MADISON. And you understand that he is a lobbyist? That is his principal occupation?

Mr. GLAVIS. No. He is interested in these coal claims and this town-site company.

Mr. MADISON. Is he a lobbyist for whomever may employ him, or is he lobbying for his own interests in connection with the coal lands?

Mr. GLAVIS. I never heard of him lobbying except for his own interests up there. That is, he told me about lobbying for that town site and lobbying for the last year for the coal lands. That is all I know about his occupation down here.

Mr. MADISON. He is not what you call a professional lobbyist, in the sense that he lobbies for revenue?

Mr. GLAVIS. No; I do not think so.

Mr. GRAHAM. For somebody else's revenue?

Mr. MADISON. He has interests of his own which he is down here lobbying for; that is the sense you want to convey?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. All I want to do is to get the facts as to who he is.

Mr. GLAVIS. That is all I know about him.

Mr. MADISON. He is a man of considerable wealth and prominence up in Alaska, is he not?

Mr. GLAVIS. I do not know whether he has any money or not; he is prominent up there; that is, among the Alaska people.

Mr. MADISON. He is prominent?

Mr. GLAVIS. Yes; he is well known.

Mr. MADISON. Does he have a home in the Northwest also; in the northwestern part of this country?

Mr. GLAVIS. No, sir; I don't think he has.

Mr. MADISON. Either in Washington or in Oregon?

Mr. GLAVIS. No, sir; I do not think he has.

Mr. MADISON. Now, then, how did you come to take his affidavit, or how did you come to have this conversation with him?

Mr. GLAVIS. Mr. Jones and I asked him to come back one night; we wanted to take his affidavit about the coal claims.

Mr. MADISON. About this group—what do you call it?

Mr. GLAVIS. The Dalton group is the one he is interested in.

Mr. MADISON. Where did you meet him—at what place?

Mr. GLAVIS. He came up to my office, 219 Federal Building, in Seattle, Wash.

Mr. MADISON. And talked with you quite a while?

Mr. GLAVIS. Yes, sir; he spent two or three hours that evening with us.

Mr. MADISON. Were you discussing generally the situation in the country and the parties who were being appointed, or who were about to be appointed to office?

Mr. GLAVIS. No, sir.

Mr. MADISON. How did he come to make this statement that you have just testified to?

Mr. GLAVIS. Well, Judge McKenzie spoke very freely to us that night, and it was just a part of the conversation. We had him tell us the history of his connection with the Alaska coal claims, practically.

Mr. MADISON. What did he tell you about it?

Mr. GLAVIS. He told us about his interests; how he became interested in the Alaska coal claims.

Mr. MADISON. Well, what did he tell you about it?

Mr. GLAVIS. Oh, that is all set out in the affidavit that I signed.

Mr. MADISON. It is on file here as a part of this record, is it?

Mr. GLAVIS. No. There are hundreds of records that are not filed in this record.

Mr. MADISON. You say he told you in conversation about being interested in these Alaskan coal lands?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And then from that drifted on to the question of the President's Cabinet?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Well, now, state, as nearly as you can, just what it was that he told you about the matter of the choosing of a Secretary of the Interior.

Mr. GLAVIS. He said, in a general way, that it was because of Mr. Garfield's antagonism against the Alaska coal claimants and his views as to how the coal land laws should be—that is, leasing the Alaska coal lands—that made him unpopular in Washington and among the coal claimants, and that was one of the reasons.

Mr. OLMSTED. What was the leasing?

Mr. GLAVIS. This leasing idea—all the coal claimants are very much against it.

Mr. DENBY. Was Judge McKenzie very close to the administration?

Mr. GLAVIS. This administration?

Mr. DENBY. To the new administration.

Mr. GLAVIS. No, sir.

Mr. DENBY. I mean was he an intimate friend of President Taft?

Mr. GLAVIS. I do not know whether he was or not.

Mr. DENBY. Was he very prominent in Washington?

Mr. GLAVIS. No, sir.

Mr. DENBY. Was he a man, would you say, in Washington, who was likely to know what President Taft had in view in making up his Cabinet?

Mr. GLAVIS. No, sir; he spoke more of what he did.

Mr. DENBY. I am speaking about his opinions about the Cabinet.

Mr. GLAVIS. He said he never went to the Cabinet.

Mr. DENBY. Was there anything in Judge McKenzie's condition in life or past history that would lead people he knew to believe that he knew what he was talking about when he made such assertions?

Mr. GLAVIS. Yes, sir. I do not think you understand what he led us to believe. We understood that he and other coal claimants secured the opposition to Secretary Garfield through their Members of Congress.

Mr. DENBY. Did you put that in the affidavit?

Mr. GLAVIS. Yes, sir; I think that is the way it is stated.

Mr. DENBY. I am just asking you why you attached any importance to the opinion of any one man about the President making up his Cabinet. He must have been a man of very peculiar prominence to have been able to have made a statement of that kind on such an important matter.

Mr. GLAVIS. He was a lobbyist at that time. He told us about his connection, and he led us to believe that if he had enough influence to do that, he might get the influence to go to the President and get another secretary.

Mr. DENBY. Was not his success as a lobbyist under the previous administration?

Mr. GLAVIS. Yes, sir; it was before the Congress—

Mr. DENBY. But you are talking about the President. What made you think that this language in his statement in regard to the

President making up his Cabinet was of sufficient importance to embody it in an affidavit? I am simply trying to find out why his statement made such an impression upon you.

Mr. GLAVIS. Because he said this was worked through Members of Congress. The coal claimants got their friends in Congress to go to President Taft.

Mr. DENBY. He said that the coal claimants got their friends in Congress to go to the President and protest against the appointment of Secretary Garfield?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Did he give you the details, and did you state the details in the affidavit?

Mr. GLAVIS. No, sir.

Mr. DENBY. Did you name any of the Congressmen in your affidavit?

Mr. GLAVIS. No, sir.

Mr. DENBY. Then again I ask you why was Mr. McKenzie's statement to that effect of such importance that you thought it worth while to put it in an affidavit?

Mr. GLAVIS. Because I believed it to be true.

Mr. DENBY. Would you believe any man's statement to be true? You must have had some reason for believing it to be true.

Mr. GLAVIS. Because I believed him, and he had demonstrated that he could get some things through down here.

Senator SUTHERLAND. You believed him because he was a lobbyist?

Mr. GLAVIS. No, sir; because he had been successful in getting legislation through.

Mr. DENBY. You see we are just trying to get at the facts.

The CHAIRMAN. I want to say at this point, for the information of the committee, that about the same session that this act of 1908, the coal-land act, was passed, Mr. McKenzie and some parties were interested in a bill for a town site at Cordova. That bill came before the Committee on Public Lands, was referred to the Interior Department and to the War Department, and both the War Department and the Interior Department—Secretary Garfield—recommended the passage of that bill. Senator Flint, if I remember, had charge of the bill. That was the Cordova town site. After that bill was signed and approved McKenzie went to Alaska and named his town Nelson. That is all I know about it.

Mr. DENBY. Mr. Glavis, the reason I am asking this, your affidavit appears to have contained a statement which very seriously reflected upon the President of the United States, a statement which you believed. Now, I want to know why you believed a statement of that kind?

Mr. GLAVIS. You misunderstand my explanation of the statement if you think it criticises the President of the United States.

Mr. DENBY. It is not susceptible of any other interpretation, is it?

Mr. MADISON. Now, Mr. Glavis, I understood you this way—

Senator FLETCHER. Let Mr. Glavis explain.

Mr. MADISON. I want to see if my impression of it is correct. My impression is that you mean to say to this committee that this man told you that they, these coal claimants, had influence enough with other men, Members of Congress and men prominent in the United States, to get them to go to the President and induce him not to appoint Mr. Garfield. Is that what you mean?

Mr. GLAVIS. Yes; that is the way.

Mr. MADISON. He did not say to you that they had influenced the President to do that, by saying to the President that Secretary Garfield was opposed to these claimants?

Mr. GLAVIS. No, sir.

Mr. DENBY. He said nothing of that kind?

Mr. GLAVIS. No, sir.

Mr. DENBY. He did not know and he did not say to you what argument these Congressmen used with the President to induce him to leave Mr. Garfield out of the Cabinet?

Mr. GLAVIS. No, sir; and I do not think that Judge McKenzie knows whether that was the reason why he was left out or not.

Mr. MADISON. You understand this fact to be something of a boast on the part of Judge McKenzie that he and his friends were powerful enough through their influences to defeat the reappointment of Mr. Garfield?

Mr. GLAVIS. Yes, sir; and Jones and I both discussed that he gave us that impression, because after he left that evening we said if he is strong enough to get rid of Garfield, he surely could get rid of us. I think Jones commented on it.

Mr. MADISON. There is no man so powerful nor his position so great that this committee, if it is within the purview of its scope, may not inquire about, and we want to get the real facts. Did he say anything that in any wise cast any reflection upon the President of the United States?

Mr. GLAVIS. No, sir; he did not.

Mr. MADISON. He did not insinuate anything that at all reflected upon him in connection with this matter?

Mr. GLAVIS. No, sir; he did not.

Mr. MADISON. He did not get any such impression and never put such a thing on the record?

Mr. GLAVIS. No, sir; neither Mr. Jones nor I ever understood his statements to mean that way.

Mr. DENBY. Did you not, yourself, know at that time that the entire Cabinet had been changed; that not only Mr. Garfield, but all other members of the Cabinet, except one, had been supplanted by successors?

Mr. GLAVIS. Yes; I knew there was a new Cabinet then.

Mr. DENBY. It does not seem hardly necessary to think that one member in particular had been gotten rid of by corrupt influences, if they were all supplanted?

Mr. GLAVIS. They were not all supplanted.

Mr. DENBY. Except one. I said except one.

Mr. GRAHAM. Did he give the impression, then, that they were not only opposing Garfield, but that they were favoring Ballinger for that position?

Mr. GLAVIS. No, sir; he did not give us that impression.

Mr. GRAHAM. That it was simply opposition to Mr. Garfield?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Do you know Clarke Davis, of Seattle?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Senator, before you pass from that subject. Mr. Chairman, I will ask the action of the committee to call upon the Forestry Bureau for a copy of that affidavit that has just been

referred to by the witness in his testimony as having been sent to the Forestry Bureau.

Mr. GRAHAM. Perhaps it is included. Is it included in the documents you have asked for, Mr. Brandeis?

Mr. BRANDEIS. I do not think it is.

Senator FLETCHER. I do not see why it should be included. It is just another statement by this witness. There is no objection to it, however, so far as I can see.

The CHAIRMAN. The Senator from New York moves that the Forestry Bureau be requested to furnish us a copy of that affidavit that Mr. Glavis has been referring to.

Mr. GRAHAM. The original would be better.

The CHAIRMAN. The original affidavit—is there objection to that? (After a pause.) No objection is heard. The affidavit will be called for.

Senator SUTHERLAND. Mr. Glavis, you were on the stand for two or three days preceding this?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Did you make any reference to this matter before?

Mr. GLAVIS. To this affidavit?

Senator SUTHERLAND. To this matter of McKenzie—the talk with McKenzie and the affidavit you made about it.

Mr. GLAVIS. I do not think I did.

Senator SUTHERLAND. Had you informed your counsel about it before?

Mr. GLAVIS. I do not know; I do not know whether I did or not. There is so much about these Alaska decisions that I do not know whether I informed him or not about it.

Senator SUTHERLAND. Was there any reason for your omitting to state it to the committee on your direct examination?

Mr. GLAVIS. Omitting it?

Senator SUTHERLAND. Yes.

Mr. GLAVIS. Why, no.

Mr. BRANDEIS. I did not ask him anything about it; I am very certain about that, Senator. I do not remember whether he ever mentioned it.

Mr. JAMES. It was brought out by Senator Fletcher.

Senator FLETCHER. I never knew of the affidavit before; I asked him about the conversation.

Mr. DENBY. There are two other papers I would like to ask you about, as to whether they are in the record or not. One is the report of Jones which was made either to you or to the General Land Office.

Mr. GLAVIS. You mean of December 2?

Mr. DENBY. In which he stated that Ballinger had told him not to conduct a thorough examination.

Mr. GLAVIS. That is in the December 2, 1907, report which Jones made to me.

Mr. DENBY. Is it already in the record?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. That is all right.

Mr. BRANDEIS. Copy of it is annexed to Mr. Glavis's statement.

Mr. DENBY. One other affidavit you spoke of Saturday, the affidavit of Harry White, was it not?

Mr. GLAVIS. Yes; Harry White. That is not in the record.

Mr. DENBY. Do you know where that is—where we could get it?

Mr. GLAVIS. That should be in the Seattle, Wash., office, in the chief of field division's office there.

Mr. DENBY. In the office of the General Land Office?

Mr. GLAVIS. Yes, in Seattle.

Mr. DENBY. Who was Mr. White?

Mr. GLAVIS. Mr. White is interested in the Green group of coal lands. He was really the promoter of the Green group of claims.

Mr. DENBY. And what was it he said in that affidavit? I have forgotten it. I can not find it in the record here.

Mr. GLAVIS. You mean as to what I testified to?

Mr. DENBY. Yes.

Mr. GLAVIS. I think I only testified to that portion of his affidavit in which he stated that Judge Ballinger had attended to some matters for Congressman Kinkaid.

Mr. DENBY. Oh, yes; that was the point. I had forgotten about it. Do you know Mr. White or anything about him—who he was?

Mr. GLAVIS. I did not know him very well. I think it was only the second or third time that I saw him.

The CHAIRMAN. May I interrupt you a moment? This White affidavit that you refer to, is not that the affidavit on page 509 in this book [indicating S. Doc. 248]?

Mr. GLAVIS. No, sir; this is Henry White. This is another man entirely. They are not related.

Mr. DENBY. I think this White affidavit that you now refer to is not in the record. Is it?

Mr. GLAVIS. No, sir; I have not seen it; I have not been over this record carefully.

Mr. DENBY. It is in Seattle?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. What date was that taken, Mr. Glavis?

Mr. GLAVIS. It was either in June or July, 1909.

Mr. DENBY. And what is the full name of Mr. Harry White?

Mr. GLAVIS. I think it is just Harry White.

Mr. DENBY. Whose present residence is what?

Mr. GLAVIS. Los Angeles, Cal.

Mr. BRANDEIS. Of the Green group?

Mr. GLAVIS. Yes, sir. The affidavit will be found with the papers in the Green group.

Mr. OLMSTED. Mr. Glavis, you made some reference about Governor Pardee. What relation had he to the matter?

Mr. GLAVIS. He had none. That was ex-Governor Pardee, of California.

Mr. OLMSTED. Why were you consulting with him about it, then?

Mr. GLAVIS. He was with Mr. Pinchot, and Mr. Pinchot asked if I had any objection to his hearing it. I think he wanted to see what he thought about it, too, as an attorney. I told him I did not object.

Mr. OLMSTED. Where did this conference take place?

Mr. GLAVIS. In the Spokane Hotel, at Spokane, Wash.

Mr. OLMSTED. I just want to ask you one question that has no relation to this. In the paper which you testified that you prepared submitting the question for an opinion to the Attorney-General you used this language—it is the fourth clause.

Mr. GRAHAM. On page what?

Mr. OLMSTED. On page 223: "A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be * * *, etc." I want to ask you what you meant by the term "initiation of the entry?"

Mr. GLAVIS. Any time before the entry was made.

Mr. OLMSTED. Any time before the entry was made?

Mr. GLAVIS. Yes, sir; and cash paid.

Mr. OLMSTED. What do you mean by the "initiation of the entry?"

Mr. GLAVIS. The initiation of the entry was the time they make the entry, and the entry that—

Mr. OLMSTED. What do you understand by the "entry?"

Mr. GLAVIS. The entry is when they make payment for the land; that is the last thing they do before the land office, at which time they pay for the land, \$10 an acre, and after that the next action that is taken, if the claims are regular, is to issue the patents.

Mr. OLMSTED. When you said the "initiation of the entry," you meant the entry?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. That is all.

Mr. JAMES. I would like to ask you a question about this letter of August 12, 1909, to M. D. McEniry, special agent, signed by Schwartz. He says in this letter:

Get into scare heads to-night and Associated Press, if possible, that Secretary and Commissioner have secured evidence showing unlawful combinations of several hundred coal entries; that General Land Office is assigning its best coal engineers and lawyers to Seattle to assist in the coming trials; that Commissioner General Land Office while in Denver had expressed confidence that several hundred entries would be canceled.

I will ask you if you know whether or not there were any newspaper notices along the line indicated, after this date, emanating from McEniry.

Mr. GLAVIS. Yes, there were, about August 13. There were those newspaper articles coming from Denver, Colo. I fix that date because it was the day I arrived in Chicago.

Mr. JAMES. Was it along the line indicated in this letter?

Mr. GLAVIS. Yes, as I recall it.

Mr. JAMES. It is further stated in that letter that the—

Government is making every effort to secure speedy action on these cases, as all coal entries in Alaska have now been suspended for over four years.

Is that true or not—

Coal entries in Alaska have now been suspended for over four years.

Mr. GLAVIS. No, sir. There were not any entries made four years from the date of that telegram; there were not any entries made four years from that date, August 12, 1909.

Mr. JAMES. Is that a telegram or a letter?

Mr. GLAVIS. I do not know. This is the only copy of it I ever saw.

Mr. JAMES. I see that it is referred to by Mr. Brandeis as a letter.

Mr. BRANDEIS. It is a telegram.

Mr. JAMES. The stenographer has it wrong. There is one letter of August 12 from Schwartz to McEniry which appears on page 424, which reads as follows—

Mr. BRANDEIS. Telegram, as I understand it.

Mr. JAMES. It ought to have been telegram.

Mr. BRANDEIS. Telegram.

Mr. JAMES. So you say that that statement in that telegram as to all coal entries in Alaska having been suspended for over four years is not true?

Mr. GLAVIS. No; there were no entries four years from the date of August 12, 1909.

Mr. OLMSTED. How long is the location made before the entry, ordinarily?

Mr. GLAVIS. In Alaska then, under the law, three years, and that was extended another year, so that they had four years; in the United States they have only one year from the date of filing of the declaratory statement about an entry to make an entry.

Mr. JAMES. The letter also says that the best coal engineers and lawyers have been assigned to Seattle to assist in the coming trials. Have you any information relative to that statement?

Mr. GLAVIS. No, sir; I do not think any engineers came out there; there did not that I know of. Perhaps he refers to Special Agent Kennedy and the expert that was sent out to Alaska. Oh, yes, there was; they did send a man about this time or before this from the Geological Survey. I do not know his name now, but they did send a coal expert out.

Mr. JAMES. What was the date of your removal by the President?

Mr. GLAVIS. September, 1909; I think it was September 19; that was my last day in the service.

Mr. JAMES. Do you know whether this telegram from Denver—you say you think about the 13th of August—going into detail as indicated in this telegram here—was that of general circulation throughout the United States, or do you know, in the various papers?

Mr. GLAVIS. No; I do not know. I bought some Chicago papers, and I think they were all the papers I got that day about it.

Mr. JAMES. You saw it in the Chicago papers?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. You do not know whether it went over the Associated Press or not?

Mr. GLAVIS. No, sir; I do not know.

Senator FLETCHER. Mr. Glavis—

Mr. GRAHAM. Just a minute, please.

Mr. JAMES. What date did you go to see the President about this matter?

Mr. GLAVIS. I do not remember that date now. My daily reports will show that. Well, it was about August 17, I think.

Mr. JAMES. About August 17?

Mr. GLAVIS. Yes, sir; but I am not sure about it.

Mr. JAMES. All right, Senator, go ahead.

Senator FLETCHER. What was the extent of the influence of these parties interested in the Alaska coal claims?

Mr. GLAVIS. What was the extent of their influence?

Senator FLETCHER. Yes; in a social as well as a political way.

Mr. GLAVIS. Well, some of them were very prominent socially, and are very prominent socially now; and some of them, of course, have a great deal of influence politically.

Senator FLETCHER. Through what States did it extend?

Mr. GLAVIS. Through Washington, Oregon, and California, and some in Idaho. There were some other claimants, a lot of other claimants, outside of those States, but the most prominent ones among the coal claimants resided in one of the four States I have mentioned.

Senator FLETCHER. Can you state what relation, if any, Mr. Clark Davis had to the Interior Department or the Land Office or any official connected with those offices?

Mr. GLAVIS. No. This Clark Davis did not have very much influence with any of them. H. R. Harriman, who was in the same group—the Hunt group—was always very friendly with Judge Ballinger and Dennett.

Senator FLETCHER. Do you know what the relation was there or had been at any time—was it just simply that of friends, or client and attorney, or what?

Mr. GLAVIS. Harriman had consulted him in regard to their own claims. Harriman consulted him one time with another man to pass on an agreement relative to another group of claims, known as the "Hartline group." The Hartline group of coal claims embraced about sixteen coal claims along about 1906. H. R. Harriman secured, or made with this Hartline agent for the other coal claimants, an agreement, an option, giving Harriman the right to purchase the coal claims for \$75,000, I think—I do not remember now the exact consideration—and some time afterwards the coal properties became more valuable, or Hartline did not want to live up to his agreement, and he tried to get out of turning these coal claims over to the people whom Harriman represented, and they agreed to go to Judge Ballinger, as I recall it, and have him decide whether or not that optional agreement was lawful and whether Hartline was bound under that agreement to transfer the claims under the option he had given Harriman.

Senator FLETCHER. About when was that?

Mr. GLAVIS. I got a photograph copy of that agreement, and I think it is dated 1906 or 1907; I am not sure as to the date. Harriman outlined this to me once, and then Special Agent Kennedy—I think it was Kennedy—secured Hartline's affidavit, and I believe he made some mention of it in an affidavit, but I do not recall the affidavit at all at this time. But the papers are in Seattle, Wash., or were when I left there, and they would explain the exact situation.

Mr. BRANDEIS. That is, they are in the local land office there?

Mr. GLAVIS. No; in the Chief of Field Division's office.

Mr. BRANDEIS. Is that one of the claims that is supposed to be fraudulent?

Mr. GLAVIS. That Hartline group?

Mr. BRANDEIS. Yes, sir.

Mr. GLAVIS. Yes.

Mr. BRANDEIS. Well, I understand they have sufficient evidence now to cancel the claims.

Mr. BRANDEIS. I mean they are claims in which the same questions arise as in the Cunningham claims?

Mr. GLAVIS. Yes. They had not proved up when this arrangement was made between Harriman and Hartline. Hartline signed for each of the coal claimants that he represented, and then signed his own name as agent or attorney in fact. He also had the coal

claims at the time this agreement--they had not proved up when he gave the option to Harriman.

Mr. BRANDEIS. It was the same situation, or similar to that, in the Wilson coal case?

Mr. GLAVIS. Yes, sir; it was along the same lines.

Senator FLETCHER. Who is John P. Gray, who telegraphed on July 26, 1909, to Mr. Schwartz, on page 532 of this Senate document?

Mr. GLAVIS. Mr. Gray is one of the attorneys for the Cunningham claimants. He lives in Wallace, Idaho. He used to be private secretary to Senator Heyburn here in Washington.

Senator FLETCHER. It appears to be claimed, Mr. Glavis, that you had upwards of two years in which to complete your investigations of these Alaska coal claims, and that you were guilty of habitual procrastination. Now, what are the facts?

Mr. GLAVIS. The facts are just as I have related them all during my testimony.

Senator FLETCHER. Well, specifically with reference to those matters, I mean. Did you have two years?

Mr. GLAVIS. No. I got charge of them in December, 1907, and I was out of service before two years were up.

Senator FLETCHER. Did you delay or procrastinate while the matters were in your hands, or did you pursue the matter as diligently as possible?

Mr. GLAVIS. No, sir; I treated them just the same as I would treat other cases, and I do not think I procrastinated.

Mr. GRAHAM. I would like to have you ask him why he did not make a report sooner.

Senator FLETCHER. Why did you not make a report on them sooner?

Mr. GLAVIS. Because they were not ready for report; because the field examination was necessary to be made.

Senator FLETCHER. And your report could not be made any sooner than you arranged for it?

Mr. GLAVIS. No, sir.

Senator FLETCHER. Could not the field examination have been made in the summer of 1908?

Mr. GLAVIS. It could; yes, sir.

The CHAIRMAN. Why did you not do it, then?

Mr. GLAVIS. Because I was called off of them May 2, 1908.

The CHAIRMAN. You had men up there, had you not?

Mr. GLAVIS. I had men in Alaska.

The CHAIRMAN. Yes; working on those claims?

Mr. GLAVIS. No; not working on those cases. They were doing the timber work.

The CHAIRMAN. But you yourself never made the field examination; other men were sent up there to do it?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Did you take any steps in 1908 to get men to go up there during the summer and make the field examination?

Mr. GLAVIS. No, sir; I had not been directed to resume that work at that time.

The CHAIRMAN. Simply because you had not been directed to do it you did not do it?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. They called you off, did they not, from making the field examination before you could have done it?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. The snow was on the claims up until July, was it not?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. When did they direct you to resume this work?

Mr. GLAVIS. In October.

Mr. JAMES. Would it have been possible for you to make the field examination then?

Mr. GLAVIS. No, sir.

Mr. JAMES. Why not?

Mr. GLAVIS. Because by the time the men would get up there it would be too stormy, and the snow was on the ground then. The snow starts to fall in October.

Mr. GRAHAM. Was other work forced on you in the States by those in authority over you which prevented you from giving more attention to this work?

Mr. GLAVIS. They did give me other work. I had been directed to resume the coal cases in June, 1908, and if they had given me a little more help I could have done that.

Mr. GRAHAM. Did you ask for those things?

Mr. GLAVIS. I stated in the letter of May—I think it was May 1—which has been in evidence, that the coal cases would not be delayed.

Mr. GRAHAM. Did you get the help you asked for?

Mr. GLAVIS. I got quite a bit of help on the work in the States.

Mr. GRAHAM. Well, out of it all, then, I ask you again, as the Senator did, why did you not make the report?

Mr. GLAVIS. Because I had not been directed to resume the investigation.

Senator SUTHERLAND. Mr. Glavis, you had men in Alaska at that time, had you not?

Mr. GLAVIS. At what time?

Senator SUTHERLAND. During the summer of 1908.

Mr. GLAVIS. I was in Alaska, and I had Special Agent Stoner with me. I do not recall whether I had anybody else in Alaska at that time.

Senator SUTHERLAND. What time during the summer of 1908 were you there?

Mr. GLAVIS. I was there in July and August.

Senator SUTHERLAND. Of 1908?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. I thought that was the time you were busy at work in Oregon?

Mr. GLAVIS. I was busy there in June, and part of July. I had to make this special trip on through Alaska to get acquainted with the territory and to work out a manner by which we could dispose of the lumber up there. Theretofore the Land Office had been accepting settlements for the cutting of timber in Alaska upon the mere word of the persons so cutting that timber. I called the attention of the office to the fact that I thought an examination ought to be made in some way before accepting the settlement of the timber so cut, and the object of my going to Alaska was to work out an idea of how that work could be done during the winter time.

Senator SUTHERLAND. That was not on these coal claims?

Mr. GLAVIS. No, sir; it had nothing to do with that.

Senator SUTHERLAND. Was that more important work than to make a field examination of the coal claims?

Mr. GLAVIS. No, sir; it was not. It was not more urgent, perhaps.

Senator SUTHERLAND. How did you happen to go there to examine the timber matter. Were you directed to go there?

Mr. GLAVIS. Yes, sir; I was directed to go.

Senator SUTHERLAND. By whom?

Mr. GLAVIS. By Mr. Dennett.

Senator SUTHERLAND. Have you the directions, and if so, were they in writing?

Mr. GLAVIS. No, sir; but there was some correspondence in here. I have not the correspondence.

Senator SUTHERLAND. In brief, what did he ask you to do?

Mr. GLAVIS. Oh, I had specific instructions—I forgot that.

Senator SUTHERLAND. From whom, Mr. Dennett?

Mr. GLAVIS. I do not know who it was who signed the letter. It was from the General Land Office, about a mining case at Nome, Alaska. It was in the Court of Claims up in Washington.

Senator SUTHERLAND. You went up there about that, did you?

Mr. GLAVIS. Yes, sir; they wanted that examined, and in connection with this examination I discussed with Mr. Dennett my plans of the timber work, and I was to cover both on the same trip.

Senator SUTHERLAND. How far was that from the coal claims?

Mr. GLAVIS. Nome is about 1,000 miles.

Senator SUTHERLAND. Were the coal claims above Nome?

Mr. GLAVIS. No, sir; it was this side of Nome.

Senator SUTHERLAND. The coal claims were about a thousand miles nearer to you than Nome; is that it?

Mr. GLAVIS. Yes, sir; but I did not go that way. I went down the river, and coming back the Nome boat does not make any stops except from Nome to Seattle.

Senator SUTHERLAND. There are boats that stop there, I suppose, are there not?

Mr. GLAVIS. Yes, sir; there are a lot of boats, but that line of boats do not.

Senator SUTHERLAND. Did you have other men in Alaska that summer?

Mr. GLAVIS. I do not think I did; I am not sure about that. I had them there in the field. As soon as I got back I sent a couple to southeastern Alaska to handle this timber work, and then in November or December I sent three men up to do the timber work.

Senator SUTHERLAND. Perhaps I misunderstood you. I thought you said to Senator Nelson that you had some men in Alaska during the summer of 1908.

Mr. GLAVIS. I was up there and Special Agent Stoner was with me.

Senator SUTHERLAND. Irrespective of what I thought you said, there were some other men up there, were there not?

Mr. GLAVIS. Outside of Mr. Stoner and myself I do not think there were.

Senator SUTHERLAND. How long would it have taken you to have made this field investigation or examination?

Mr. GLAVIS. Of the Alaska coal cases?

Senator SUTHERLAND. Yes; covering the 33 claims—the Cunningham claims?

Mr. GLAVIS. Oh, about a month—a month or five weeks, probably—from the time of leaving Seattle, I mean.

Senator SUTHERLAND. I mean on the ground. How long would it have taken on the ground?

Mr. GLAVIS. I do not know; a couple of weeks, I think, or ten days would be ample, but you know with the line of boats up there, I think they only leave once a week, and sometimes the boats do not stop at Katalla, and it is the getting to the work and getting back that takes so much time in that connection.

Senator SUTHERLAND. Mr. Glavis, do you remember calling the attention of the Land Office, the General Land Office, specifically to the necessity of making this field examination during the summer of 1908?

Mr. GLAVIS. In one of the letters we called for—a personal letter that I wrote Schwartz in January or February, 1908—I outlined then that I thought a field examination would be necessary, and then later Schwartz and I discussed it. When we discussed the Cunningham journal, we knew it would be necessary.

Senator SUTHERLAND. What I want to call your attention to is this, that after you were assigned to the Oregon work, and found you were going to be kept on that work, did you at any time call the attention of the General Land Office to the necessity of making this field examination during the summer months, or suggest to them that it might be done during that summer?

Mr. GLAVIS. No, sir; I did not write them at all about that because Dennett was there in July, and when we discussed the coal cases, he made no mention of the work. I do not know whether I made any mention to him of the field work then or not.

Senator FLETCHER. Had you sufficient affidavits at that time; that is, had you all the affidavits that you wanted to collect at that time; had you done the other work?

Mr. GLAVIS. There were some few left to be secured.

Senator FLINT. On your return from Nome in July, 1908, how much longer would it have taken you to have stopped and visited the Cunningham claims and made the examination there and returned to Seattle than the trip that you did take?

Mr. GLAVIS. On the trip I made I left Nome in August instead of July—the middle of August, I think it was. We could not get a boat leaving Nome that would stop at Katalla.

Senator FLINT. No boat?

Mr. GLAVIS. It would require me to go all the way to Seattle, and there wait a day to a week to get a boat going to Katalla. Then, if it was stormy for the boat, when it got to Katalla—some of the boats did not make regular stops there—they would carry me to Cardova, and I would have to wait a few days until I could come back and take a chance on stopping coming back. And, furthermore, I could not make that examination myself, and neither could Stoner, because we were neither of us coal experts, and an examination of those claims required an expert examination.

Senator FLINT. It was not possible for you to have stopped, then, on your trip home from Nome to Seattle; it was going to Seattle and back again?

Mr. GLAVIS. No, sir; we tried to get a boat to stop about halfway down, at Dutch Harbor, but we could not get down even that far.

Senator ROOT. How did you go up when you went up there?

Mr. GLAVIS. I went from Seattle to Juneau, and from Juneau to Skagway, and from Skagway over the White Pass, on the Yukon Railroad, and down the Yukon River.

Mr. BRANDEIS. Have you ever been on those Katalla coal fields yourself?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. What is necessary in the way of a field examination—I mean what expert knowledge or experience is necessary in order to make an adequate field examination.

Mr. GLAVIS. A man would have to be a regular coal expert in order to go through the tunnels and see whether the tunnels were being made to tap the different coal veins from the one mined, or how the mines were made. I would not know much about the operation of a coal mine; I never had any experience in it.

Mr. BRANDEIS. And Mr. Stoner had had no experience, had he?

Mr. GLAVIS. No, sir; not in the handling of coal mines. Mr. Kennedy had been a coal expert about twenty years; he had operated mines in Pennsylvania and the State of Washington.

Mr. BRANDEIS. Mr. Kennedy was the special agent who was sent up there the following year in pursuance of your request that the field examination be made, was he?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, in this summer of 1908, or the spring of 1908, had there been any special request during that spring or summer that you should hurry the Cunningham cases to a hearing?

Mr. GLAVIS. Yes, sir; I received instructions the latter part of February—no, about the first part of February—telling me to immediately proceed with the investigation, but I was called off of them before I had finished them.

Mr. BRANDEIS. You refer, then, to the investigation that you had begun about the beginning of March, when you got the Cunningham journal?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Mr. Glavis, briefly, what was it necessary for you to ascertain by this field examination?

Mr. GLAVIS. Just the manner in which the improvements were made; how the tunnels were driven into the mountain.

Senator SUTHERLAND. That is, to ascertain by an inspection upon the ground on what openings had been made.

Mr. GLAVIS. Yes, sir; and also—

Senator SUTHERLAND. And what improvements—what physical improvements—had been placed on the ground?

Mr. GLAVIS. Yes, sir; and also to locate and follow the veins of coal which these tunnels were to locate, to show that these tunnels would tap a different vein outside of this one coal claim, and also to show that the main tunnel that they had up there could not benefit some of the other claimants while those same claimants were paying for the development work on a claim that did not benefit them.

Senator SUTHERLAND. That is, to show to what extent the work that was done there was calculated to develop the various claims; is that the point?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. That is to say, to determine whether it was to b worked as one concern or as a number of separate ones?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Referring to your trip, Mr. Glavis, back to Nome, you came by steamship in August. What time in August was it?

Mr. GLAVIS. I do not know the date; I think I left Nome about August 15, as near as I can remember. My daily reports will show.

The CHAIRMAN. You came by the way of Dutch Harbor?

Mr. GLAVIS. The boat did not stop at Dutch Harbor.

The CHAIRMAN. But you came through Unimak Pass?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Did that boat touch at Sitka that you came on—either Sitka or Juneau?

Mr. GLAVIS. I do not remember; I came down on the *Northwestern*—

The CHAIRMAN. If the boat had touched at Sitka or Juneau, could not you have waited there and taken the boat and gone up to Valdez by way of Katalla?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And there would be no need of your going back to Seattle?

Mr. GLAVIS. Yes, sir; I came down on the *Northwestern*—the steamship *Northwestern*.

The CHAIRMAN. You did not notice whether you touched at Sitka or Juneau on your trip back?

Mr. GLAVIS. I do not think we did, but I am not sure about it. I think we came straight through to Seattle from Nome.

The CHAIRMAN. If you had stopped at Sitka or Juneau, could you have stopped there and caught a Valdez boat which would have taken you up to Katalla?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Now, what time did you go back to Seattle on that trip—about what time?

Mr. GLAVIS. I got back some time about the 20th.

The CHAIRMAN. Could you not then, after you got back, if the spirit had moved you, gone back there to Katalla on that boat from Seattle?

Mr. GLAVIS. I did not have my instructions to do that as yet.

The CHAIRMAN. Oh, it was simply a lack of instructions?

Mr. GLAVIS. Oh, no, sir; I had a lot of other work. I was not waiting for this coal work to keep me busy.

The CHAIRMAN. But you preferred being ordered back to Oregon after you came from Nome?

Mr. GLAVIS. I was at Nome. My headquarters were then at Portland and—

The CHAIRMAN. You had no specific orders to go back, had you?

Mr. GRAHAM. Mr. Chairman, I would like to have the answers of the witness—I would like to hear his answers. He does not conclude them.

Mr. GLAVIS. When I had the orders—Portland was my headquarters at that time—to make a field examination or investigation and when I finished the work that I was on I was to go back to my headquarters without any instructions.

The CHAIRMAN. Was there anything that made it necessary for you to go back to Portland at that time except keeping up with the work?

Mr. GLAVIS. Yes, sir; I had been away from the division about six weeks, and there was lots of work that accumulated during that time that required my attention.

Mr. BRANDEIS. Would it have done any good—would it have advanced the work on these coal claims in the least if you had taken the steamer back and gone right up to Katalla?

Mr. GLAVIS. No, sir; I could not qualify as a coal expert. My testimony would not be considered in that regard.

Mr. BRANDEIS. It would have been an absolutely useless performance, would it not?

The CHAIRMAN. But it never occurred to you that summer to ask the department to send the experts up to examine the coal fields, did it?

Mr. GLAVIS. No, sir; I had been called off of it.

The CHAIRMAN. But it never occurred to you to ask for that in the summer of 1908?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Did it ever occur to you that that was urgent until 1909?

Mr. GLAVIS. It did occur to me before 1909.

Mr. JAMES. Was it your duty to be calling for experts upon some work which you had been taken off of?

Mr. GLAVIS. No, sir; we never did it. We waited to be directed to resume.

The CHAIRMAN. When you came back to Portland after that Alaska trip, what work did you then take up—you yourself?

Mr. GLAVIS. It took me several weeks to go over the agents' reports that had been made at that time, which awaited my approval.

The CHAIRMAN. What agents do you refer to?

Mr. GLAVIS. I do not know how many agents I had in Portland at that time—probably seven agents altogether.

The CHAIRMAN. Then it took you how many weeks to go over the agents' reports?

Mr. GLAVIS. I do not know; probably a couple of weeks, or two or three weeks. I had the whole work of the office, the direction of the men.

The CHAIRMAN. After those two or three weeks what special work did you do then?

Mr. GLAVIS. In September—the latter part of September—I started to prepare for the land-fraud trials, the first case being the Pacific Furniture and Lumber Company case—a criminal case—where we indicted three out of the five.

The CHAIRMAN. You regarded that as urgent business then—important and urgent?

Mr. GLAVIS. Yes, sir; that work had to be done.

The CHAIRMAN. It had to be done then?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And for the time being that was more urgent and important than continuing the Alaska coal investigation, was it?

Mr. GLAVIS. It was more urgent, yes, sir, than the Alaska investigation, but not as important.

The CHAIRMAN. But was it not more urgent to go down to Oregon and help in these land-fraud cases in the spring and summer of that year than attending to the Alaska cases?

Mr. GLAVIS. Yes, sir; it was, but it was not more important.

The CHAIRMAN. So that the department, in taking you from the Alaska business to that more urgent work, could not be criticised for that fact, could it?

Mr. GLAVIS. Well, I could have handled both if they had sent me enough men.

The CHAIRMAN. Well, you know the reason why they did not send you enough men in the spring was because the appropriation had run out, was it not?

Mr. GLAVIS. No, sir; they had, I think, all during that month, probably 60 or 70 agents working on the special work.

The CHAIRMAN. Is that not what the department wrote you, that their appropriation was short; and did not Secretary Garfield send a letter with instructions to open it by wire after the appropriation had passed?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Did that not indicate that the appropriation had run short, and that he was waiting until Congress made a new appropriation, and when Congress made that, why his letter would become operative?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. I have only a few more questions that I would like to ask—about three, I think. In seeking the construction of the act of 1908, did Mr. Schwartz and Mr. Ballinger, when you talked of that matter, have in mind its construction with reference to the Cunningham claims?

Mr. GLAVIS. I think that they had it in mind. I had it in mind when I discussed it, and my views included the Cunningham claims.

Senator FLETCHER. Was the conversation such between you three as to include the Cunningham claims?

Mr. GLAVIS. Yes, sir; Mr. Dennett was also present at that time.

Senator FLETCHER. Have you the letter of Schwartz to you in reply to your personal letter to him of July 31, 1909?

Mr. GLAVIS. No, sir; I have not.

Senator FLETCHER. Can you state whether or not, turning to page 800 of Senate Document No. 248, he correctly gives the substance of it, that is he gives his recollection only—whether your recollection agrees with his.

Mr. GLAVIS. Well, the first part there that "I immediately replied to Mr. Glavis's letter," he did not do that; it was some time after that letter was dated. I recall his letter. He said that he had heard from Dennett, and either Dennett or I would have to resign or make a suitable apology to one another in some way, to straighten it out. I got that letter after I returned from seeing the President.

Senator FLETCHER. You never received it until after this?

Mr. GLAVIS. No, sir.

The CHAIRMAN. What has become of that letter; have you got it?

Mr. GLAVIS. No, sir; I have not got it.

The CHAIRMAN. What has become of it?

Mr. GLAVIS. I do not know; I had it in Portland.

The CHAIRMAN. Did you give it to anyone in the Forestry Bureau?

Mr. GLAVIS. No, sir.

Mr. BRANDEIS. Was it on that letter that you got, in answer to yours of July 31, that Mr. Schwartz sent you that letter which spoke of Senator Guggenheim seeing the President about Mr. Dennett?

Senator FLETCHER. Is that in the record?

Mr. BRANDEIS. No, sir.

Mr. GLAVIS. Yes, sir; it was about the same time. They were both received about the same time.

Mr. JAMES. Has that letter been filed?

Mr. BRANDEIS. No, sir; it has not been.

Mr. JAMES. We would like to have it filed.

Mr. GLAVIS. It is dated August 6, 1909, from Denver.

Mr. GRAHAM. From whom to whom?

Mr. GLAVIS. It is a letter signed by "McE" to Hon. Fred Dennett.

Mr. GRAHAM. Probably McEniry or McEnergy, is it?

Mr. GLAVIS. Yes, sir. The letter attached to this letter is one from McEniry, and he says "see my letter to-day with reference to information received from Mr. Pope."

Mr. DENBY. Are those originals, Mr. Glavis?

Mr. GLAVIS. No, sir; they are copies of the originals.

The CHAIRMAN. Where are the originals?

Mr. GLAVIS. In the General Land Office.

The CHAIRMAN. Is that a part of the letters that you have called for, Mr. Brandeis?

Mr. BRANDEIS. I do not think we have called for that. We have some general calls. I did not have his letter particularly in mind when I called for them.

The CHAIRMAN. It is not in your list of calls?

Mr. BRANDEIS. Not that I know of; it was not specifically there. I am not certain whether the general language might cover it or not in some way. Mr. Glavis, do you know whether these are correct copies?

Mr. GLAVIS. I had my stenographer—the one working there—to make a copy of it, but I do not know whether it is actually correct or not.

Mr. BRANDEIS. That is, the original letter was sent to you by Mr. Schwartz, was it?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. And this is a copy made before you returned the letter to Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. When were those letters sent you by Mr. Schwartz?

Mr. GLAVIS. Some time in August. They were there when I got back, as I recall.

The CHAIRMAN. In August, 1909?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. When you got back from where?

Mr. GLAVIS. From seeing the President. I think they were there when I got back, but I am not sure.

Senator FLETCHER. Do you wish to file that letter?

Mr. BRANDEIS. Yes, sir.

Mr. McCALL. An attempt will be made first to get the original, of course.

Mr. BRANDEIS. In view of the Chairman's suggestion, we will ask that the originals be had.

The CHAIRMAN. Will you leave those copies, in order that I may use them?

Mr. BRANDEIS. Yes, sir; I will give them to the stenographer. (The letters referred to are as follows:)

DENVER, COLO., August 6, 1909.

HON. FRED DENNETT,

Commissioner General Land Office, Washington, D. C.

DEAR MR. DENNETT: I saw Horton Pope to-day and he asked me if I knew that Vivian was again trying to be a candidate for Commissioner of the General Land Office. I said I had learned of it and asked him what he had done in the matter. He said he had done nothing in particular, only that Senator Guggenheim had called on the President about it to enter a protest; that the President had informed him (the Senator) that there was to be no change in the position of commissioner.

The Senator further stated that the President advised him that Mr. Dennett was giving complete satisfaction, that personally he thought a lot of him, that he was a personal friend of the Secretary's, etc.

Sorry I did not have this good news yesterday so as to give it to you when you were here. But it only confirms, of course, what we have all the while believed—that there was no chance for Vivian. It is good, however, to hear such fine words about you, coming from the President.

This letter from Senator Guggenheim to Pope was dated July 20. Pope showed me the letter. He doesn't figure out, nor can I, how Vivian happened to interest Speaker Cannon in his candidacy. This part of the proposition is an unknown quantity to both of us. Mr. Pope thinks that Mr. Walsh of this city and Washington was the man who initiated the second candidacy for Vivian.

Hope you got home all right, after enjoying the ride over the prairies of northwest Nebraska, and that you are rested up.

With kind regards, yours truly,

McE.

DENVER, COLO., August 6, 1909.

MY DEAR HARRY: See my letter to-day with reference to information received from Mr. Pope to the effect that Ernest Knaebel was supposed to be appointed attorney in the Department of Justice in charge of all land matters, etc.

Since writing the letter this afternoon I have met Mr. Pope, and he requests me not to make any mention with reference to Knaebel; that he got the information from Guggenheim in strict confidence, and he does not wish it made public as coming in any way from him.

Yours, truly,

M. D. McENERY.

Senator ROOT. Do they contain something relative to the subject matter of this investigation?

Mr. BRANDEIS. It is about the matter that Mr. James has been asking, and they appear to be included in part of the letter the chairman is asking about.

Senator FLINT. I understood from you, Mr. Glavis, that it was not important for you to visit Alaska to examine those coal fields, for the reason that you did not have sufficient knowledge of coal lands and the work necessary to be done on mines in order to obtain the necessary testimony to set aside those entries.

Mr. GLAVIS. That I could secure outside of that enough evidence, do you mean?

Senator FLINT. No; you did not have knowledge enough of the coal business so that a visit there would be of any benefit?

Mr. GLAVIS. No, sir; I did not have.

Senator FLINT. Now, having that in mind, did you ever write to the department asking them to send out to you or assign to you an expert to visit the Alaska coal fields so that you could obtain this information?

Mr. GLAVIS. No, sir; they had a coal expert at Portland to do that.

Senator FLINT. Did you ever write to the department asking for authority to direct this expert to visit Alaska to investigate this coal land?

Mr. GLAVIS. You mean during 1908?

Senator FLINT. At any time.

Mr. GLAVIS. I did not in 1908, but I had a good deal of correspondence with them in 1909 relative to the examination.

Senator FLINT. No; I am asking you, did you make the direct request of the department to authorize or to send this expert to Alaska to examine these coal fields?

Mr. GLAVIS. Not in 1908 and not in 1909, and not specifically by name of Andrew Kennedy, I do not think. The correspondence will show, but I did tell them that a field examination was necessary.

Senator FLINT. Did you say that you had an expert in your department there that you could send?

Mr. GLAVIS. I did not have to tell them that. They knew that.

Senator FLINT. You think they knew that?

Mr. GLAVIS. Yes, sir.

Senator FLINT. What was Kennedy doing during those months?

Mr. GLAVIS. In 1908 he was working—that is, in July, he was working on some important coal cases down in Oregon that are in the forest reserve there. He worked there part of June, I think, and part of July. Then he was ordered to Wyoming and worked on some coal cases, making some coal examinations, and did not return to Portland until September or October.

Senator FLINT. When he was taken from the Portland district and sent to the Wyoming district, did you advise the department that that was a mistake and that he should be sent to Alaska; that that was more important work?

Mr. GLAVIS. No, sir; I did not advise them that. I know I sent a telegram trying to keep him in my division, but I did not specifically state that he was needed in Alaska.

Senator FLINT. Mr. Kennedy, while he was in the West there, was under your direction, as I understand you?

Mr. GLAVIS. Until he went to Wyoming for that short period; yes, sir.

Senator FLINT. But you had a right to send him to such coal investigations as you thought proper?

Mr. GLAVIS. Yes, sir; that I was allowed to investigate.

Senator FLINT. Now, as I understand it, you are of the opinion that the letters that you had received from the department prohibited you sending Mr. Kennedy to Alaska to examine the coal fields there, but you had directions to have him examine coal fields in Washington?

Mr. GLAVIS. No, sir; in Oregon.

Senator FLINT. In Oregon. Am I correct about that?

Mr. GLAVIS. Yes, sir; I could assign him to any work that required investigation that I had on my docket, and the Alaska coal case was the only work that I recall having been directed to discontinue.

Senator FLINT. And you consider that the communications you have received and the conversations that you have had with the officials in Washington was such as to stop you from proceeding with the work in Alaska?

Mr. GLAVIS. The Alaska coal investigations; yes, sir.

Senator FLETCHER. Mr. Glavis, then the reply by Mr. Schwartz to your personal letter of July 31 was not received by you for some twenty days after that time—after August 17, anyhow?

Mr. GLAVIS. No, sir; it was about the 20th, I think, when I got it.

Senator FLETCHER. The 20th of August. Where was Mr. Schwartz on the 16th or 17th of August?

Mr. GLAVIS. I do not know. This letter came from Washington, D. C. I think he was there.

Senator FLETCHER. Mr. Glavis, why were no criminal prosecutions commenced by you after the papers were transmitted to you by the Juneau office?

Mr. GLAVIS. Well, I took that up with the United States attorney, and the United States attorney wrote me a letter and asked me to submit it to the commissioner.

Senator FLETCHER. Please name him?

Mr. GLAVIS. Elmer Todd, United States attorney at Seattle, Wash.

Senator FLETCHER. He wrote you a letter?

Mr. GLAVIS. He wrote me a letter asking me to get the authority from the Attorney-General to bring the matter before the grand jury.

Senator FLETCHER. Is that letter in the record; can you produce that letter?

Mr. BRANDEIS. That is one we have called for.

Mr. GLAVIS. I made a report to the commissioner, either transmitting that letter or quoting a large part of it—I forget now which way it was—and I did not send it because Dennett was coming out in a short time, and I held it and waited until I had a talk with him; and he came out and thought that if the entries were canceled that ought to be sufficient punishment, and we did not present the matter to the grand jury.

Senator FLETCHER. Did Mr. Dennett advise against criminal prosecutions then?

Mr. GLAVIS. Well, that was his opinion and his direction.

Senator FLETCHER. His direction—not to institute criminal proceedings?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Did he know that such proceedings would be barred during May of 1908, or was that the case?

Mr. GLAVIS. Well, I wired that it would be barred but afterwards we found some overt act that extended that conspiracy, so that the three years did not run in May.

Senator FLETCHER. The three years would not have run in May?

Mr. GLAVIS. No, sir.

The CHAIRMAN. How did you construe it; as running from the date of location or the date of entry?

Mr. GLAVIS. We construed the conspiracy by the overt act instead of by the entries.

Senator FLETCHER. So you mean to say that there were no criminal prosecutions instituted because of the direction in that regard of Mr. Dennett, your superior?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. Were those instructions in writing?

Mr. GLAVIS. No, sir; he was in Portland. I took it up with him personally.

Senator SUTHERLAND. What cases were you speaking of—the Alaska cases?

Mr. GLAVIS. The Alaska cases. I think it was the Christopher and Simonds group.

Senator SUTHERLAND. Was it the Alaska cases or the Oregon cases?

Mr. GLAVIS. The Alaska cases.

The CHAIRMAN. It is now about 5 o'clock, the time for adjournment. Before we adjourn I would like to put in the record, in connection with the testimony about Donald McKenzie, the act on page 598, Thirty-fifth Statute, being "An act authorizing the sale of lands at the head of Cordova Bay, in the Territory of Alaska, and for other purposes."

(The act is as follows:)

[S. 6418. PUBLIC—No. 214.]

AN ACT Authorizing the sale of lands at the head of Cordova Bay, in the Territory of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a corporation to be hereafter duly organized under the name and style of the Cordova Bay Harbor Improvement and Town-Site Company and composed of the following-named persons, to wit: John H. McGraw, Edward Lewin, and Donald A. McKenzie, or any of them, and such others as may hereafter become associated with them as incorporators, shall be permitted to purchase at the price of two dollars and fifty cents per acre not to exceed two thousand acres of such nonmineral lands of the United States as may be selected by said corporation and approved by the Secretary of the Interior, including tide or mud flats, situated at the head of Cordova Bay, at approximately latitude sixty degrees and thirty minutes north, and longitude one hundred and forty-six west of Greenwich, in the district of Alaska, the same to be located in as nearly compact form as possible with a front of not to exceed two miles on the wharfage and dock area to be reserved by the Secretary of War as provided in section three of this act, in order to effect the improvement of said lands for town-site purposes and for the promotion and convenience of commerce with foreign nations and among the several States; *Provided, however*, That the Secretary of the Interior is hereby authorized and directed to withdraw from all forms of location or entry not to exceed three thousand acres to be selected by him and surrounding the land hereby made purchasable, subject to future disposition by the Congress.

SEC. 2. That no land covered by any valid existing claim or right heretofore initiated or recognized under any law of the United States shall be subject to purchase under this act until all rights thereunder have been transferred to said corporation or relinquished to the United States.

SEC. 3. That the Secretary of War, as soon as practicable after the passage of this act, shall establish a wharfage and dock area extending along the entire water front of the land proposed to be bought by said corporation and one thousand feet in width, thereby fixing the seaward line of said wharfage and dock area, and the area thus established is hereby reserved and shall remain under the control of the United States, in trust, however, for the future State which may be created, including the same or any part thereof within its boundaries: *Provided*, That wharves, docks, slips, and waterways may be constructed and maintained within such wharfage and dock area in accordance with plans approved and terms and conditions prescribed from time to time by the Secretary of War, but the public at all times shall have the use of all such wharves, docks, slips, and waterways upon the payment of such reasonable charges, and under such regulations as may from time to time be fixed and prescribed by the Secretary of War.

SEC. 4. That the right of eminent domain may, after the issuance of patent hereunder, be exercised over any lands purchased under this act, whether such lands may have been included within streets and alleys or otherwise, under any law applicable to lands held in private ownership in the district of Alaska, and no exclusive right of way shall be granted to any person, company, or corporation over the lands purchased under this act.

SEC. 5. That the corporation named in section one of this act shall, within six months after the approval hereof, file with the register and receiver of the land dis-

tract within which the lands applied for are situated, an application to purchase under this act, which application shall particularly describe the lands applied for and be accompanied with a certified copy of the field notes and plat of the survey of the boundaries of such lands, made under the direction and supervision of the surveyor-general of the district of Alaska.

SEC. 6. That the corporation named in section one of this act shall, within twelve months after the approval of the application named in the foregoing section, subject to the approval and under the direction of the Secretary of the Interior, file with the said Secretary a detailed plan of a town site, embracing the lands applied for, upon which shall be delineated adequate streets, alleys, lots, blocks, wharves, docks, slips, and waterways, and such reservations as the said Secretary may deem necessary and suitable for public use as parks and sites for public and school buildings and coaling stations: *Provided*, That the reservations for public parks shall, in addition to such other lands as may be needed for that purpose, include all of said lands which can not be reasonably utilized as sites for building purposes; and said corporation shall, after patent, dedicate and convey all of the said reservations for such public uses.

SEC. 7. That the corporation named in section one of this act, or its assigns, shall within six months from the approval of the plan mentioned in the preceding section, pay to the proper receiver the full purchase price of the lands applied for; and within five years after the issuance of patent said corporations shall do all things necessary to render three hundred and twenty acres of the land purchased suitable and available for wharfage and town-site purposes in accordance with the plan thereof submitted as required in section six of this act, and shall within two years from the approval of the plan mentioned in the preceding section construct within said wharfage and dock area a public dock, wharf, or pier, with suitable approaches on the land side and with not less than thirty-four feet of water at mean low tide leading to and surrounding the same, so as to enable ocean steamers to approach, dock, discharge and take on cargoes thereat; that patent for said lands shall recite that they are issued under the provisions of this act and are subject to cancellation and the land therein granted to forfeiture as herein provided; and if said corporation or its assigns shall fail to comply with any of the terms and conditions of this act, either before or after the issuance of patent, all interests, rights, or title which may have accrued or vested under this act shall be forfeited to the United States, and the application under which they accrued, or the patent under which they vested, shall be canceled: *Provided*, That the Secretary of the Interior may, on satisfactory showing, reasonably extend the time within which any of the acts enumerated in this act may be performed.

SEC. 8. That said corporation shall have the right to confine the waters of Cordova Creek to one channel and to straighten and deepen the same in such manner as may be prescribed by the Secretary of War.

Approved, February 6, 1909.

The CHAIRMAN. I also in that connection put in the original bill which was introduced by Senator Piles.

(The original bill as introduced by Senator Piles is as follows:)

[S. 6418, Sixtieth Congress, first session.]

IN THE SENATE OF THE UNITED STATES.

March 31, 1908.—Mr. Piles introduced the following bill; which was read twice and referred to the Committee on Public Lands.

A BILL Authorizing the sale of lands at the head of Cordova Bay, in the Territory of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a corporation to be hereafter duly organized under the name and style of the Cordova Bay Harbor Improvement and Town-Site Company, and composed of the following-named persons, to wit: John H. McGraw, Edward Lewin, and Donald A. McKenzie, or any of them, and such others as may hereafter become associated with them as incorporators, shall be permitted to purchase from the United States at the price of two dollars and fifty cents per acre five thousand acres of nonmineral land, together with the mud flats adjacent thereto, situated at the head of Cordova Bay, in the Territory of Alaska, the same to be located in as nearly compact form as possible, with a water front of not to exceed two miles on Cordova Bay, and in accordance with law governing the making of surveys in the Territory of Alaska: *Provided*, That final receipt and patent shall issue for the land entered under this act only after full payment of the money due on account of the purchase thereof

to the receiver of the United States land office in the district wherein said land is located.

SEC. 2. That no land covered by any valid existing location or entry under any of the public-land laws of the United States shall be subject to purchase or entry under this act until all rights thereunder have been transferred to said corporation or relinquished to the United States.

SEC. 3. That said corporation shall have the right to construct and maintain wharves, docks, slips, and waterways on the shore line in front of the land purchased by it, in accordance with plans to be submitted to and approved by the Secretary of War: *Provided*, That ample streets and ways of access to the water front and harbor area hereinafter provided for shall be reserved to the public, which streets and ways shall be noted upon the plans approved by the Secretary of War: *And provided further*, That the public shall have the right to the use of all wharves, docks, slips, and waterways erected upon said harbor area in front of the lands purchased upon payment of reasonable charges therefor, and the Secretary of War shall, as soon as may be practicable after the passage of this act, cause said harbor area to be established along said water front, not exceeding eight hundred feet in width, which said harbor area shall be forever reserved to the public and the land embraced therein shall not be subject to purchase under this act. No dock, wharf, pier, or other structure shall be erected beyond the outer line of said harbor area as established by the Secretary of War.

SEC. 4. That before the purchase herein authorized shall be completed a plan of the town site, showing in detail the reservations made for public buildings, schools, and parks, and such other necessary public improvements as he shall deem necessary, shall be submitted to the Secretary of the Interior for his approval, and the land included in such reservations shall not be subject to purchase under this act, but shall be forever dedicated to the use of the future town.

SEC. 5. That no exclusive right of way shall be granted to any railway company over the lands purchased under this act.

SEC. 6. That said corporation shall have the right to confine the waters of Cordova Creek to one channel, and to straighten and deepen the same.

The CHAIRMAN. It was referred to the Secretary of the Interior, who reported back a substitute. It was afterwards referred to the Secretary of War, who suggested certain amendments, and a substitute of Mr. Garfield, with the amendment of the Secretary of War, was reported. I have Secretary Garfield's report here. I will put that in and ask afterwards to put in the report of the Secretary of War, and I wish the members of the committee would examine the act and see what it is. Here is the last part of Secretary Garfield's report:

I am of opinion that the bill should be modified as indicated in the proposed substitute herewith inclosed in order to make its provisions more elastic and better safeguard the interests of the Government and the public.

In this connection attention is called to the fact that the proposed substitute reserves to the United States in perpetuity, or until Congress shall otherwise direct, a harbor area 1,000 feet in width, fronting upon the proposed town site, and places the wharfage privileges solely under the control of the Federal Government.

If the proposed modification, indicated by the substitute bill, is made, I am not aware of any facts upon which a serious objection to the passage of the bill could be based.

In addition to the typewritten proposed substitute, I inclose a copy of it, which embodies the original bill and shows modifications I have made in it.

Very respectfully,

JAMES RUDOLPH GARFIELD, *Secretary*.

The COMMITTEE ON PUBLIC LANDS,
United States Senate.

The entire report of Secretary Garfield is as follows:

DEPARTMENT OF THE INTERIOR.

Washington, May 2, 1908.

SIRS: I am in receipt of your request that I furnish your committee such facts and information as may be in the possession of this department touching the subject-matter of the proposed legislation embraced in S. 6418, "Authorizing the sale of lands at the head of Cordova Bay, in the Territory of Alaska, and for other purposes."

In response to this request, and to your verbal request through the Commissioner of the General Land Office for an expression of opinion on the merits of the bill, and

a suggestion of such amendments as may seem necessary, I have the honor to submit that neither the lands affected by this bill, nor any other lands in their immediate vicinity have been surveyed, or in any other manner examined or clarified by this department, and I am for that reason unable to make any report as to either the character, the present occupation, or the fitness of the lands for town site, wharfage, or other purposes.

No applications for patents have been presented to the General Land Office for any of these lands, but your attention is called to the fact that lands in Alaska may, under existing laws, be covered by homestead locations for seven years, or by mineral locations for an indefinite period, before the department receives any information as to the existence of such locations, for the reason that notices of locations are filed with local recorders only and are not brought to the attention of the Land Department until the locators apply for patent. I am, therefore, unable to say whether any of these lands are now being claimed under either the homestead or mineral land laws.

Section 8, act May 17, 1884 (23 Stat. L., 26), declares:

"That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use, occupation, or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."

Later statutes protect the occupation of Indians and of persons conducting mission stations among the Indians, but I am unable to say whether there is now such occupation of these lands as would be protected by these statutes.

It appears that the lands affected by this bill, or the more desirable part of them, are tide lands lying below mean high tide; but the Supreme Court said in *Shively v. Bowlby* (152 U. S., 48):

"We can not doubt, therefore, that Congress has the power to make grants of lands below high-water mark of navigable waters in any territory of the United States whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of said lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the territory."

This department is not in possession of sufficient information as to the character or location of the land, the surrounding conditions, or local needs to enable me to determine whether the benefits of the town-site and wharfage privileges contemplated by this bill are of sufficient importance to the general public to justify the granting of the special privilege of purchase to this private corporation.

Attention is called to the fact that the bill as introduced may not be sufficiently specific in its provisions relating to rights of way and that it does not sufficiently fix and limit the time within which the purchasers shall perform such acts as may be necessary to render the lands available for town-site and wharfage purposes, but, if Congress should deem it wise to authorize the sale of these lands for the purposes indicated in this bill, I am of opinion that the bill should be modified as indicated in the proposed substitute herewith inclosed in order to make its provisions more elastic and better safeguard the interests of the Government and the public.

In this connection attention is called to the fact that the proposed substitute reserves to the United States in perpetuity, or until Congress shall otherwise direct, a harbor area 1,000 feet in width, fronting upon the proposed town site, and places the wharfage privileges solely under the control of the Federal Government.

If the proposed modification, indicated by the substitute bill, is made, I am no aware of any facts upon which a serious objection to the passage of the bill could be based.

In addition to the typewritten proposed substitute, I inclose a copy of it, which embodies the original bill and shows modifications I have made in it.

Very respectfully,

JAMES RUDOLPH GARFIELD, *Secretary*.

The COMMITTEE ON PUBLIC LANDS,
United States Senate.

The CHAIRMAN. My recollection also is that Senator Flint reported the bill. It was also referred to the War Department, and the Secretary of War made some suggestions and amendments, and they were incorporated, and the incorporators in the act are:

That a corporation to be hereafter duly organized under the name and style of the Cordova Bay Harbor Improvement Town Site Company and composed of the following-named persons: John H. McGraw, Edward Lewin, and Donald A. McKenzie, or any of them, etc.

Those were the incorporators and that is the law. What I know about Donald McKenzie is that I was on a committee that went up to Alaska in 1905, and I found Donald McKenzie up as a court commissioner on the Kodiak River, Judge Wickersham's district. I got acquainted with him up there. That is all I know about him. After they got the bill passed and I got back to Seattle, I saw a clipping from the newspaper that he was going to call the town Nelson.

I called the attention of the committee to these facts, because at the time the bill passed I was chairman of the Committee on Public Lands. Senator Flint had charge of the bill and reported it. [Laughter.]

Senator Root. Mr. Chairman, here is a memorandum that has been handed to me, being memorandum of records of papers in the Interior Department, hearing on charges against the administration of the Department of the Interior. It appears to me that these papers should be requested from the department.

The CHAIRMAN. Senator Root moves that certain papers specified in the list which he submits be sent for from the Interior Department. If there is no objection I will have the papers named sent for.

(The memorandum of papers referred to is as follows:)

MEMORANDUM OF RECORDS AND PAPERS IN THE INTERIOR DEPARTMENT BEARING ON CHARGES AGAINST THE ADMINISTRATION OF THE DEPARTMENT OF THE INTERIOR.

1. Glavis charges in re Alaska coal claims. Files relating to Alaska coal lands and legislation or proposed legislation relating thereto. Copies of records of the Cunningham and other groups of Alaska coal claims and the Whorf Alaska coal claim.

2. Letters from Messrs. Garfield and Pinchot to President Taft complaining of the administration of the Interior Department by Secretary Ballinger, Secretary Ballinger's letter to the President, etc.

3. Withdrawals, restorations, and papers relating to conservation of water resources, water-power sites, and restorations of lands.

4. Letters relating to the issuance and use of cooperative certificates in payment for work performed under the reclamation act and opinions of the Attorney-General and the Comptroller of the Treasury as to illegality of such certificates.

5. Copy of files relating to the cooperative agreement for the handling of timber on Indian reservations by the Forest Service and the discontinuance of the cooperative work; also records pertaining to lumbering operations by the Forest Service upon the Menomonee Indian Reservation in Wisconsin.

6. Papers and records relating to applications for railroad rights of way along the Deschutes River, Oregon, and protection of alleged power possibilities.

7. Reports of Secretary Ballinger, First Assistant Secretary Pierce, Commissioner Dennett, and Chief of Field Division Schwartz to the President relative to the Glavis charges. Report of the Attorney-General relative thereto and findings of the President (S. Doc. No. 248, 61st Cong., 2d sess.).

8. Miscellaneous letters of Mr. Ballinger to Secretary Garfield and Commissioner Dennett relative to Alaska coal claims, also correspondence between Mr. Ballinger and L. R. Glavis between July 21, 1908, and February 20, 1909.

9. Letters written by Mr. Ballinger showing disinclination to accept office of Secretary.

10. Affidavits relating to activities of Law Officer Shaw of the Forest Service in connection with L. R. Glavis inspiring charges and insinuations against the administration of the Interior Department.

Mr. BRANDEIS. Before the committee adjourns I wish to ask, Mr. Chairman and gentlemen, whether you desire Mr. Glavis to appear at the next hearing.

The CHAIRMAN. I do not know whether the committee is through with Mr. Glavis or not. Counsel will see that we are in an unfortunate condition. There is no one here to cross-examine or appear for what you might call the other side. It has been simply the members

of the committee who have been conducting a feeble examination. It may be that some of the members of the committee may desire to examine Mr. Glavis further. As to that I can not say. I, personally, have no desire to examine him any further, but maybe some other members of the committee may have a feeling in that direction.

Senator ROOT. I do not believe we can determine now whether we are through with Mr. Glavis or not, in view of the fact that there is a great mass of papers that have been put in, or called for—and manifestly are to be put in—the contents of which will affect the subject-matter as to which Mr. Glavis has testified. I should not be willing at this time to determine myself whether I ought to ask him any questions or not until I have had an opportunity to go through these papers.

Mr. BRANDEIS. Has the next day of meeting of the committee been fixed?

The CHAIRMAN. Yes; the next meeting will be on Friday next at 10 o'clock. So Mr. Glavis will be kind enough to put in his appearance at that time.

Mr. GRAHAM. And with regard to the papers that Senator Root has referred to, how soon may we hope to see those?

The CHAIRMAN. I can not answer that. I can only say that we will call on the department for them to be furnished immediately.

Senator ROOT. May I make another suggestion? May we not make a direction that when these papers come in they be handed to the stenographer and be printed without reading for our next meeting. We are letting in anything that comes along that has any relation to this investigation, and we mean to continue to do so. Now, why not let these papers get into print as soon as possible, without waiting for the next meeting of the committee?

The CHAIRMAN. You mean that they should be printed before they are introduced?

Senator ROOT. Yes, sir.

Mr. BRANDEIS. As far as I am concerned, I would be very glad, of course, to have them printed, but I have asked for reports covering certain periods because in certain portions of that testimony I am not advised as to the exact date on which certain occurrences took place. It is therefore obvious that certain of these papers will be relevant and certain of them will be irrelevant with respect to the matters on which I want to introduce them. I shall be very glad indeed to have them printed, but I only want the committee to understand that I do not assume that each one of these dates will be important. It is with respect to certain dates, and I am unable in many cases, with respect to some papers, to give the exact dates.

Mr. DENBY. You have not asked for any annual report or voluminous papers, have you?

Mr. BRANDEIS. In the daily reports I have asked for papers covering quite a long period, because I wish to ascertain and lay before the committee the exact facts which only those reports can present; but of course there will be certain facts which, as they appear, will bear directly on the question.

Senator ROOT. They may be other facts.

Mr. OLMSTED. They may be interesting, if not relevant.

Senator ROOT. As to that, you will have to refer to the godfather of the town of Nelson.

The CHAIRMAN. Do you include in your motion these papers, as well as the papers that Mr. Brandeis has called for?

Senator ROOT. Yes, sir.

Senator SUTHERLAND. It may turn out that these reports that Senator Root is calling for may be voluminous, and only a small portion of them would be relevant.

The CHAIRMAN. Would it not be well for Mr. Brandeis to inspect them first?

Mr. OLMSTED. He may think them irrelevant and we might think them relevant.

Mr. BRANDEIS. I should be very glad to have them in definite form—

Senator FLINT. There is another matter that I want to suggest, and that is that I understand the reports that are being asked for are reports of Mr. Glavis, special field agent of the Government, to his superior officer. There may be some matters there that are not relevant, that refer to cases pending in the courts, and we certainly would not have the right to take those matters up before the court has decided upon them.

Senator ROOT. It would be the duty of the Department of the Interior to decide that matter.

Senator FLINT. We are calling upon the Secretary to produce the papers.

Mr. JAMES. Not where it involves the public interest.

Senator ROOT. I do not see how anything could be irrelevant here. The scope of this inquiry is so broad that relevancy has practically disappeared.

Mr. JAMES. That is, everything is relevant.

Senator ROOT. Let us get these papers into print.

The CHAIRMAN. Very well. I want to remind the committee that getting all these papers printed will probably delay us somewhat. It will take some time to put them in print because the matter covers the whole law of documents. Mr. Brandeis has called for the reports of the special agents. I want to call your attention to some of the matter that he is calling for: "The daily reports of special agents, report books, now or formerly in the General Land Office, or the Seattle or Portland, Oreg., land offices, of the following persons for the periods respectively set forth." Then it enumerates a whole lot of agents here—seven in number.

Mr. GRAHAM. Let me make a suggestion. We may shorten the record. Would it be practicable for the committee to have an executive session at some time before Friday to pass upon those matters and determine upon them?

The CHAIRMAN. Before we print them, do you mean?

Mr. GRAHAM. Yes, sir.

The CHAIRMAN. I think that would be a very wise plan, because I am satisfied that a good deal of this matter does not need to go in the record.

Mr. GRAHAM. We would doubtless agree that a great deal of it is immaterial.

The CHAIRMAN. It may involve an endless expense, and a great deal of it may be mere surplusage. I think the suggestion of Mr. Graham is a good one. What do you think of that, Senator Root?

Senator ROOT. I think that that is a wise suggestion.

The CHAIRMAN. That before we order the matter printed we consider it in executive session?

Mr. BRANDEIS. May I have the liberty of seeing that evidence before the decision is reached, in order that I may make suggestions to the committee as to what I deem to be relevant?

The CHAIRMAN. Certainly, at any time it reaches us. I have not received any of it as yet, even what you called for, but I will say that the next morning after you called for this evidence I filed a request with the Interior Department for the papers, and they are at work on it now.

Mr. BRANDEIS. What I had hoped was that they would send in the evidence in installments in order that we might take time, as soon as it was sent, to examine it and see to what extent it appeared to be relevant.

The CHAIRMAN. I suggested that to the Land Department, that what they had on hand here and did not have to send to Seattle or Juneau for, they might send to us immediately, or as soon as possible. Of course what they had to send to Seattle or Juneau for would necessarily take time.

Mr. BRANDEIS. I supposed these daily reports must be on file here, and it would only be a matter of a few minutes to get them and send them up to the clerk, and I could look over them as soon as they reached him.

The CHAIRMAN. Just as soon as they come up you will be notified and have a chance to examine them. I understand then, Senator Root, that this matter of printing is to be held in abeyance.

Senator ROOT. I am perfectly satisfied with that. What I desired was that the wheels should not stop while we were not in session.

The CHAIRMAN. I understand. We are to determine what ought to be printed in executive session. Is that satisfactory, gentlemen? Without objection it is so ordered.

Mr. DENBY. When will we have an executive session?

Mr. GRAHAM. At the call of the chairman.

The CHAIRMAN. There will be no occasion to call an executive session until we get the documents.

Senator FLETCHER. I move that it be at the call of the chairman.

(The motion was agreed to.)

The CHAIRMAN. I suggest that we now adjourn until our regular meeting, and in the meantime, if these documents come, I will call an executive session. Is that satisfactory? In the absence of an objection it is so ordered.

(Thereupon, at 5 o'clock and 15 minutes p. m., the joint committee adjourned until Friday, February 4, 1910, at 10 o'clock a. m.)

FRIDAY, FEBRUARY 4, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., February 4, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 11 o'clock a. m., after executive session.

Present, Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Purcell (vice Paynter, resigned); Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Joseph R. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot.

The CHAIRMAN. A quorum is present. The secretary will please read the following letters.

(The secretary read as follows:)

UNITED STATES SENATE,
Washington, D. C., February 2, 1910.

Hon. R. A. BALLINGER,
Secretary of the Interior.

MY DEAR MR. SECRETARY: I was instructed by the joint committee of investigation last Friday to suggest to you the importance of being represented by counsel before the committee to examine and cross-examine witnesses and for the purpose of presenting to the committee in orderly form such evidence as was important and material. The committee were impressed with the idea that witnesses ought to be cross-examined, but were reluctant to assume the attitude of cross-examiners, feeling that that duty should be performed by counsel. I called at your office in the department on the following morning, but found you were away, so that I could not communicate with you. I take this opportunity to convey to you in this formal manner the suggestion of the committee, as indicated above.

I shall be glad to hear from you at your earliest convenience on the subject.

Very truly,

KNUTE NELSON,
Chairman Joint Committee.

WASHINGTON, February 3, 1910.

MY DEAR SENATOR. I herewith acknowledge receipt of your esteemed favor of the 2d instant, stating that you have been instructed by the joint committee of investigation to suggest to me the importance of my being represented by counsel before the committee to examine and cross-examine witnesses, for the purpose of presenting to the committee in orderly form such evidence as is important and material, and also stating the reasons of your committee why it is now deemed that such course should be pursued.

In my letter to you of January 22, my declination to employ counsel was based upon the belief that your committee might be less hampered in its investigation, and because I did not wish to be placed in the position of imposing any check or obstacle to the free and full investigation of the conduct of myself or any officer of my department, nor examination of any records which the committee might desire me to have. I still adhere to that position; but I find, upon examining the testimony taken before your committee, that such investigation is not being secured, and, responsive to the suggestion of your committee, I have concluded to employ counsel as soon as possible.

It will require several days for my counsel to reach Washington, and in order that his services may be effective it is desirable that he be enabled to familiarize himself with the record so far made up and the general circumstances involved in the inquiry. This, I have no doubt, can be accomplished in time to permit of your proceeding on Monday, February 14, or possibly at an earlier date. I would, therefore, respectfully suggest that further proceedings be deferred until that time, or such earlier time as may be arranged.

Respectfully,

R. A. BALLINGER,
Secretary.

Hon. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
United States Senate.*

The CHAIRMAN. By direction of the committee I addressed the following letter on January 26, 1910, to Robert J. Collier, 416 West Thirteenth street, New York City:

JANUARY 26, 1910.

Mr. ROBERT J. COLLIER,
Editor Collier's Weekly, New York.

DEAR SIR: I am authorized by the joint committee under House joint resolution No. 103 (now Pub. Res. No. 9), a copy of which is inclosed, to invite you, and hereby invite you, to appear before the said committee here in Washington, to give any evidence or information you may have, or possess, relative to any matters within the scope of the inquiry outlined in said resolution; and the authors of any of the articles contained in your magazine, relative to said matters, are also invited in like manner to appear before the committee. Inasmuch as their addresses are unknown to me, I ask you, on my behalf to extend this invitation to them.

The time for appearance can be hereafter agreed upon to suit your convenience and the convenience of the other gentlemen referred to.

This invitation is sent you because the committee is desirous of obtaining full information upon the subjects under investigation.

Yours, very truly,

Chairman of said Committee.

A similar letter was also sent to the following: B. J. Hampton, publisher, 66 West Thirty-fifth street, New York City; A. F. Walker, publisher, 12 West Thirty-second street, New York City; S. S. McClure, publisher, 44 East Twenty-third street, New York; Editor of the Engineering News, 220 Broadway, New York.

The committee has received the following replies:

NEW YORK, January 31, 1910.

HON. KNUTE NELSON,
*Chairman of Joint Committee
of Inquiry into Department of the Interior,
Washington, D. C.*

SIR: Replying to your courteous invitation to appear before your committee, I beg to say that it will give me pleasure to comply with your request.

Much of the matter which I had deemed important for the consideration of your committee is now being presented by Mr. Glavis and his counsel. Still other matters will, I understand, be submitted by Mr. Pinchot and his counsel.

If the evidence they submit should not cover all the matters relevant to the inquiry which have come to my notice, I shall ask your committee to fix a day when it will be convenient to hear me.

I am, sir, with great respect,
Very truly, yours,

ROBERT J. COLLIER.

NEW YORK, February 1, 1910.

HON. KNUTE NELSON,
United States Senate, Washington, D. C.

DEAR SIR: I have received your courteous invitation of January 26, to appear and testify before the Interior Department investigating committee. I should be very pleased to render aid to your committee in any way, but on careful consideration it seems to me I would not be justified in taking the time of your committee. I presume your letter of invitation was sent to me because of the editorials on the Reclamation Service work published in our issues of September 30 last and January 13. The opinions expressed in those editorials were based on conversations and correspondence with a considerable number of engineers and others familiar with the reclamation work, and examination of published matter from various sources. So far as any of this matter is pertinent to your committee's investigation, it seems to me that it should be obtained from original sources, such as the official records of the Reclamation Service and the statements of those who are or have been in position of authority in it. It would be unwise for me to take the committee's time and cumber its record with testimony that might be obtained at first hand.

With much respect, I remain,
Very truly, yours,

CHARLES WHITING BAKER,
Editor in Chief.

The CHAIRMAN. In pursuance of the request of the Secretary the committee has decided to adjourn the hearings this morning until next Friday at 10 o'clock, and the hearings will accordingly be adjourned until that time.

Mr. BRANDEIS. Mr. Chairman, before the hearings are adjourned I should like to call the attention of the committee to the fact that the documents which the committee called for just a week ago to-day have not yet been furnished in any part. I have spent the last three days in Washington in the expectation of being able to examine those documents in order to cull from them that which would be relevant to this inquiry and lay it before the committee with the least expenditure of time on the committee's part. I have good reason to believe that a large number of those documents are ready and could have been submitted to me through the committee, and that they have not been submitted for reasons satisfactory to the Interior Department. I think, in view of the assurance which the Secretary gives us that he does not wish to put any check or obstacle in the way of that examination, that such part of those documents as are available should be submitted, and submitted at once, for our examination, and that they ought not to be kept back. I have the assurance given me by the chairman that a week ago, or six days ago, he, in the presence of the clerk of the committee, called at the Interior Department and gave special direction that those documents should be submitted in installments from day to day as they are ready. I had also the assurance from the clerk the day before yesterday that Mr. Schwartz had himself stated that he would on that morning bring up documents, and that other documents would be brought here. It therefore seems to be a matter of comment and for action by the committee that these documents have been withheld and that the opportunity for making the examination has not been afforded to us.

The CHAIRMAN. The committee have already acted on that. I will say to the counsel that no documents have been received yet by the committee; that if they had been I should have called attention to the fact.

Mr. BRANDEIS. I am very certain that is the fact.

The CHAIRMAN. And the committee has suggested to me that I call the attention of the Secretary to this very matter, and I will further say that I will have a transcript of counsel's remarks transcribed and transmit them to the Secretary of the Interior.

Mr. BRANDEIS. I should like——

Mr. JAMES. I think, Mr. Chairman, it would be proper to say to the attorney what conclusion the committee came to about these documents being sent here as speedily as possible in installments, not waiting for the whole to be concluded.

The CHAIRMAN. The committee have directed the chairman of the committee to communicate with the Secretary and request him to send these documents up in installments as soon as they are ready, and I will take that course.

Mr. BRANDEIS. As to that communication, could it be submitted by telephone? I have spent three days here waiting for it, and I want to return to Boston in view of the adjournment that you have made and in view of engagements of very great importance, and I should

like to spend this day in examining such part of the documents as are ready.

The CHAIRMAN. As soon as we get through here I will have a letter framed and send it down by a special messenger. I prefer to put it in writing.

Mr. BRANDEIS. Thank you.

Senator SUTHERLAND. I should like to say, Mr. Chairman, the committee had this very matter under consideration this morning, and it was the unanimous opinion of the entire committee that the Interior Department should be directed to send the documents as rapidly as possible—as rapidly as they are completed.

The CHAIRMAN. If there is nothing further before the committee, the committee stands adjourned till next Friday at 10 o'clock a. m.

(Accordingly, at 11.05 a. m., the committee adjourned until Friday, February 11, 1910, at 10 o'clock a. m.)

SATURDAY, FEBRUARY 5, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR DEPARTMENT AND FOREST SERVICE, *Washington, February 5, 1910.*

The Joint Committee to Investigate the Interior Department and Forest Service held an informal public session at 11 o'clock a. m., after executive session.

Present: Senators Nelson (chairman), Flint, Sutherland, Fletcher, and Purcell; Representatives Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; also Mr. John J. Vertrees, representing Secretary Ballinger; also Mr. Gifford Pinchot.

The CHAIRMAN. I want to say to the public that Senator Root and Representative McCall have been with us in our executive session and have concurred in the action of the committee. A lot of documents and papers have been called for from the Interior Department and the committee have had under consideration that matter. I will say that a large bundle of papers came last night about ten minutes before 5, and another smaller bundle just came this morning.

The secretary will read for the information of the public what the committee have agreed upon. It is the unanimous action of the committee, and the attorneys and public will take notice of that fact. Will the secretary please read the resolution?

(The Secretary read as follows:)

Resolved, That the secretary of the committee retain the custody of all papers sent by the Interior Department; that he make a list and schedule of the same; and that he allow Messrs. Brandeis, Cotton, Pepper, and Smythe, attorneys, to inspect same in his presence, but not take any away or make copies of the same, and that they designate those documents and papers they desire to introduce in evidence, and that after such examination and designation that Messrs. Vertrees and Rasch, attorneys for Mr. Ballinger, be given the same opportunity to examine the papers and to designate such papers as they may desire to put in evidence; all these examinations to be under their obligations as attorneys not to make public any of the contents of the papers until received in evidence.

The CHAIRMAN. I have received the following letter from Secretary Ballinger:

WASHINGTON, February 5, 1910.

MY DEAR SENATOR: I beg to advise you that Hon. John J. Vertrees, who is now in Washington City, will represent me as counsel in the hearings before your committee. Mr. Carl Rasch will also be associated with him. Mr. Rasch has not yet reached Washington City. I would be pleased to have Mr. Vertrees advised of any meetings of your committee where counsel are permitted to be present.

Very respectfully, yours,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
United States Senate.*

The CHAIRMAN. Mr. Vertrees, counsel for Mr. Ballinger, is present. Does he desire to say anything?

Mr. VERTREES. I have nothing to say, but simply rise to have my appearance entered before the committee.

(An informal discussion followed concerning the order of taking testimony, in view of the possible absence of Mr. Brandeis in Illinois during the latter part of next week or the early part of the following week, but no action was taken in the matter.)

The CHAIRMAN. The committee has also received the following letter from Benjamin B. Hampton, in response to the letter of the committee of January 26, 1910:

HAMPTON'S MAGAZINE, 66 WEST THIRTY-FIFTH STREET,
[Washington office, Munsey Building.]
New York, January 29, 1910.

HON. KNUTE NELSON,
United States Senate.

MY DEAR SIR: Your esteemed favor relative to the Ballinger inquiry has been forwarded to me here.

As editor of this magazine I am, of course, entirely responsible for anything that appears in its pages, but I am not able to secure personally all the information that enters into the construction of the articles which we print.

The water power and other articles dealing with the Pinchot-Ballinger affairs were written by Mr. John L. Matthews, a member of our staff, and an investigator in whom we have full confidence.

It is my judgment that my personal testimony before your committee would contribute very little if anything of value. I could do nothing more than read to you the articles which I have printed in my magazine, as that represents practically the extent of my information.

I would say that it would be worth while for you to communicate with Mr. Matthews, and I believe his testimony might be worth while.

You can address him as follows: John L. Matthews, 14 North Kings highway, St. Louis, Mo.

I might suggest that Mr. Matthews is preparing to make a trip to the coast and that if your committee desires to hear him it would be to his convenience if you advised him soon.

I return to New York Monday. You can reach me there after that day.

Yours, truly,

BENJ. B. HAMPTON.

The CHAIRMAN. The committee will now adjourn till Friday at 10 o'clock.

(Accordingly, at 11.15 a. m., the committee adjourned until February 11, 1910, at 10 o'clock a. m.)

FRIDAY, FEBRUARY 11, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FOREST SERVICE,
Washington, February 11, 1910.

The Joint Committee to Investigate the Interior Department and Forest Service met pursuant to adjournment at 10 a. m.

Present, Senators Nelson (chairman), Sutherland, Root, Fletcher, and Purcell; Representatives McCall, Olmsted, Denby, James, and Graham; Mr. Paul Sleman, secretary; also Mr. John J. Vertrees and Mr. Carl Rasch, representing Secretary Ballinger, and Mr. George Wharton Pepper, representing Mr. Gifford Pinchot.

The CHAIRMAN. A quorum is present—

Mr. GRAHAM. Mr. Chairman, in that connection allow me to suggest that the printed record of the meeting of February 4 shows only Senators, members of the Senate on the committee, were present; it does not show that any members of the House were here. As a matter of fact they were all here, and I ask that the record now show that correction.

The CHAIRMAN. That correction will be made.

The Secretary will read the telegrams and communications we have received from Mr. Brandeis.

(The papers are as follows:)

BOSTON, MASS., *February 7, 1910.*

HON. KNUTE NELSON,
*Chairman Joint Investigation Committee,
Senate Chamber, Washington, D. C.*

Argument in Springfield, Ill., proceeds on February 10, and I must therefore ask for adjournment as arranged with your committee. Have written.

LUIS D. BRANDEIS.

BRANDEIS, DUNBAR & NUTTER,
161 DEVONSHIRE STREET,
Boston, Mass., February 7, 1910.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Chamber, Washington, D. C.*

MY DEAR SIR: I have just telegraphed you as follows: "Argument in Springfield, Ill., proceeds on February 10, and I must therefore ask for adjournment, as arranged with your committee. Have written."

I have just been advised that the argument in the case involving the constitutionality of the Illinois women's ten-hour law will proceed on February 10 at Springfield, Ill., and I must therefore ask for the adjournment of the hearing on any Alaska coal matters, as arranged provisionally with your committee on the 5th.

It is barely possible that if the argument is completed on the 10th I might be able to reach Washington in time for a hearing in Washington on Saturday, February 12, but I presume your committee will prefer to make a definite adjournment until Monday, February 14, as originally suggested.

I will wire you from Springfield definitely when I shall be able to return to Washington.

Yours, very truly,

LOUIS D. BRANDEIS.

[Telegram.]

FEBRUARY 7, 1910.

LOUIS D. BRANDEIS, *Boston, Mass.:*

Do you want adjournment to Saturday or following Monday?

KNUTE NELSON, *Chairman.*

[Telegram.]

BOSTON, MASS., *February 7, 1910.*

KNUTE NELSON,

*Chairman Joint Investigating Committee,
Washington, D. C.:*

Telegram received. Thank you. Better make postponement until Monday.

LOUIS D. BRANDEIS.

SECRETARY OF THE INTERIOR,
Washington, February 9, 1910.

MY DEAR SENATOR: Replying to yours of the 7th instant, in reference to the possible postponement of the hearing before the joint committee from Friday next to Monday, February 14, I beg to say that I have consulted my counsel and they are not disposed to offer any objection to a continuance, if your committee feels that one should be granted, to the time specified, although both my counsel and myself are anxious to proceed with the utmost dispatch in the disposition of the hearing.

Yours, very truly,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,

*Chairman Joint Committee of Investigation,
United States Senate.*

The CHAIRMAN. Has the counsel any objection to make before the committee as to this request?

Mr. VERTREES. Mr. Chairman, we have no objection.

The CHAIRMAN. The committee, in view of the request of Mr. Brandeis—

Mr. PEPPER. Excuse me, Mr. Chairman, there is one suggestion I should like to make before any action is taken on the suggestion of the chairman. I have the honor to appear not only with Mr. Smyth for Mr. Pinchot, but also for Messrs. Price and Shaw. These gentlemen, as is known to the committee, were dismissed from the government service on the 7th of January. It is a matter of urgent necessity, especially in Mr. Shaw's case, that he should be at liberty at the earliest possible moment to get to work and engage in remunerative occupation. He is desirous of leaving Washington for the purpose of doing so, as it is his intention to practice law in the West, and he has actually shipped his household goods to his point of destination. These gentlemen, in response to the direction of the Forester, submitted to him on January 6 a joint letter under date of January 5, which contained a compact and candid statement of the activities on their part which had been alleged to be pernicious, and upon the basis, no doubt, of their letter were dismissed from the service. That letter—

The CHAIRMAN. We can not go into that subject this morning—

Mr. PEPPER. Mr. Chairman, if you will bear with me for just one moment, I want to make a single suggestion which perhaps will meet the difficulty that you are suggesting. I have their letter here, which, as I say, is a complete and candid statement of their whole relation

to the matter, and is the letter upon the basis of which they were dismissed. Now, they know no reason why they should volunteer any testimony before the committee, and if no one takes issue with any of the matters or things alleged in the letter, or if there are no other matters respecting which they are to be interrogated, I was merely going to suggest that I should be permitted to file this their answer with the committee, which would leave Mr. Shaw free to carry out the very necessary plan which he has formed. He can not leave Washington until the committee indicate they are not desirous of calling him. I merely say that they are in the position of having put themselves upon record with respect to all possible facts germane to the matter, and I suggest that you would permit me to file this with the committee as their answer to the charges that have been made. They are not in a position to volunteer testimony.

Senator SUTHERLAND. Have there been any charges made against them?

The CHAIRMAN. My own judgment is that this is irregular. If we are to adjourn this case over, this is in the nature of evidence and we ought not to proceed at all in this matter.

Mr. PEPPER. Of course, I should be very glad to defer to whatever is the judgment of the committee. I understood that the only reason for the adjournment was the impossibility of proceeding with the consideration of the Alaska coal cases in the absence of Mr. Brandeis. I thought in the interest of making progress and as an act of justice to Mr. Shaw, that if he was not to be called as a witness, and I know of no reason why he should be, that he should be set free to leave, which he can not do now without an imputation of shirking a possible duty of appearing.

The CHAIRMAN. I understood from Mr. Brandeis the other day before he left, here in the open session of the committee, that he would not like to have anything done in reference to the coal-land matter in Alaska in his absence. Now, if I understand this correctly—your statement—my impression is that a part of it bears upon that question, and I submit that in his absence and under the circumstances it would be hardly proper to put in that paper now, because at the rate we are proceeding a lot of papers have been put in in the form of evidence and so considered by the committee. However, I will submit this question to the committee in executive session.

Mr. PEPPER. Thank you, sir.

Mr. OLMSTED. Let me ask, Mr. Chairman, whether Mr. Pepper desires to submit that letter in evidence, or merely for the consideration of the committee in executive session?

Mr. PEPPER. If the committee care to make a suggestion, I should adopt either course they thought proper; my thought is that Mr. Price and Mr. Shaw, in view of the fact that they put themselves upon record as to the course that they pursued in this matter and were dismissed upon the basis of their answer, that there is no occasion whatever for volunteering testimony upon their part, and I know of no reason to believe that they are going to be called by anybody. If they are not going to be called, my thought was it would be an act of simple justice to Mr. Shaw to let him depart in peace.

Mr. GRAHAM. Could you give to each member of the committee a copy of the letter at this time, so that we could have it till Monday,

and determine the matter then without having it go into the regular record?

Senator ROOT. I should like to make this suggestion, Mr. Pepper. So far as I know nothing has appeared before the committee on which we might call in question Mr. Price or Mr. Shaw. We have nothing before us to indicate they will be called in question or that they will not. The committee has not called for them and has not, so far as I know, any ground to call for them. Ground may develop hereafter. We can not tell. But if you put in this paper as a statement in behalf of Mr. Price and Mr. Shaw, there would necessarily follow an obligation on their part if called upon to appear and submit to cross-examination upon it, if it should appear that the paper is relevant to any matter before the committee. So that you are rather committing Mr. Price to coming back here if you put in the paper and the paper turns out to have any relation to the inquiry. If, on the other hand, the paper is treated as one of the documents having to do with the history of the case, instead of being submitted in behalf of Mr. Price, then probably it would involve no obligations on his part at all. I should think that it would be much better to let it take merely its natural place as a part of the history of the case.

Senator FLETCHER. I move, Mr. Chairman, that the document be received by the committee as a part of the records in the case, and then on Monday, after examining it, we can decide whether these gentlemen ought to be detained here to testify, or whether we can later take it up with them, or have them come when we need them; but it seems to me that this document ought to be received by the committee.

Mr. GRAHAM. Not as a part of the record as yet?

Senator FLETCHER. Just as other matters have been introduced.

Senator ROOT. As a part of the history of the case and not as a statement by them.

Mr. JAMES. You offer it as a statement, do you not, Mr. Pepper?

Mr. PEPPER. My thought, Mr. Chairman, if I can answer in sequence the suggestions that have been made, was this—addressing myself first to what has been said by Senator Root—that I am very glad to commit both Mr. Price and Mr. Shaw to the proposition that if anybody wants to examine them or cross-examine them touching any matter or thing contained in this document, or any other matter or thing, they will be ready at the time indicated by the committee to answer such questions as may be put to them; but they are not in a position and have no reason to volunteer any testimony; but that they do desire to place in the possession of the committee this document, which exhibits in compact and candid form a statement of just what the activities are, which, though not made the subject of formal accusation, have been publicly alleged to have been pernicious activities, and I think—

Mr. OLMSTED. If you will allow me to ask a question, Is it not more probable that the submission of that letter will call for their cross-examination?

Senator FLETCHER. Well, they can be sent back here later when wanted.

Mr. OLMSTED. Permit me, Mr. Chairman, would it not be better that it should be put in when we get through with the witness who is

now on the stand, Mr. Glavis, rather than injecting it into the midst of his testimony?

The CHAIRMAN. Mr. Pepper, allow me to suggest to you as an attorney, I think the proper way would be for you to submit that statement to counsel on the other side, Mr. Vertrees, and have him state whether he desires to cross-examine Mr. Price and Mr. Shaw upon those matters. I think that would be the logical, the proper, and the judicial way.

Mr. JAMES. Well, Mr. Chairman, has he not the right, though, as these parties are discharged employees of the forestry service, to file in the nature of an answer—their statements to the committee? Is he required now to submit that to the attorney for the other side before he files it? The attorney for the other side if he desires may move to strike it from the files, but I take it he has the right to file it.

Mr. PEPPER. I appreciate the suggestion of Mr. James, but I should not like to acquiesce in the suggestion that there is any reason in the world why this should not be handed to Mr. Vertrees, and the document is at his disposal. I assume a copy of it has been accessible to him.

All that I desired to do was to place in the possession of this committee—and I hope I am not being misunderstood—for such disposition as the committee thought proper to make of it, a copy of the document upon the basis of which these gentlemen were dismissed from the government service, and which, so far as I know, is the sum and substance of their offending.

Senator SUTHERLAND. To whom is this letter addressed?

Mr. PEPPER. This, sir, is a communication dated January 7, addressed to the Forester, who was then the superior officer of these gentlemen.

Senator SUTHERLAND. Is it to be found in the record that we have?

Mr. PEPPER. No, sir. It was in compliance with a request from the Forester to make a report to him of the activities on the part of these gentlemen alleged to have been pernicious. This document was delivered to the Forester, was by him transmitted in due course to his superior, the Secretary of Agriculture, and was no doubt by him transmitted to the President. Immediately thereafter these gentlemen were dismissed from the government service. My recollection is that no reasons were given for the action, but presumably it was on the basis of the showing made in the letter. Now they are perfectly willing to be judged by the thing which was made the basis of that action. They think that the records of the committee will not be complete unless this document is among them, and they see no reason, subject to the better judgment of the committee, why the document should not be received at this time, because that will set them free to go about their own business, which is very important they should do, of course holding themselves in readiness to respond at any time to the summons or suggestion of the committee or anybody else in respect to any manner in which they are to be interrogated.

The CHAIRMAN. That document has not been sworn to?

Mr. PEPPER. Not at all, sir.

Senator FLETCHER. I move we receive it, Mr. Chairman, as matter for our own information. It is not a question whether it justifies

anybody or does not justify anybody. The only thing is that it contains information that is important to this committee.

Mr. GRAHAM. I second the motion.

Mr. VERTREES. Mr. Chairman, I want to say a word with reference to that. I do not wish to be understood, of course, as interposing objection to any desire that the committee may have to call for any paper or document. It is the committee which is making this investigation. But I do wish to object to the notion that there can be presented to this committee any sworn or unsworn statements. If there be any documents of any character, any official documents, that the committee wants, it is eminently proper, as it seems to us, that the committee should send for them. But, on the other hand, if there be any person who wishes to inject here mere statements of his own, it should not be some sort of an ex parte communication, but he should present himself as a witness to be examined and cross-examined here. It strikes me that is the proper course. The substance of this paper, as I gathered from the statement, is not to give to light the wrongdoing of some particular official, and the object of this investigation is to see whether there has been any wrongdoing; whether or not these men who were discharged were wrongfully discharged; whether injustice was done to them. We are not caring so much now, it seems to me, for statements from them, as we are for a statement with reference to somebody who has done them wrong—not their justification, but the other man's wrongdoing, and I do not think that it should be presented just in the form in which it comes. However, I am not going to interpose any objection to the action of the committee in calling for anything that the committee wishes to consider.

Mr. GRAHAM. Mr. Chairman, my suggestion which went unheeded was that Mr. Pepper would submit to each member of the committee informally a copy of this document. It seems to me this should not go into the record at this time, because it is not evidence, it is not sworn to, and it should not find a place in the record, but it is of considerable importance that the members of the committee should have opportunity to go over it between now and Monday, and it might help to accommodate Mr. Shaw and help the committee in the work they are doing, and if he could furnish to each one of us informally a copy of it, it would be a desirable thing; but I object to its going into the record now as evidence when it is not yet evidence.

Mr. OLMTED. It may be evidence when either of these gentlemen are on the stand.

Mr. GRAHAM. In the meantime it can do us only good to be in a position to discover what it discloses, what its purpose is, and my purpose was to see if Mr. Pepper could give to each one of us a copy of this paper.

Mr. PEPPER. I can not at this moment, but later in the day I will duplicate it and furnish copies as desired.

Mr. JAMES. As I understand you, it is merely a copy of the records in the Forestry Service?

Mr. PEPPER. This is a copy of a letter which is presumably in the possession of the Secretary of Agriculture or the President, and I think there is some misapprehension in raising a question respecting its admissibility as evidence. If the document itself were here, I presume it would be admitted just as any other letter has been admitted,

without requiring the writer of the letter to swear to the fact that he wrote it.

Mr. OLMSTED. The only objection at this time, Mr. Pepper, is that the record has not been called for. There are no charges against either of these gentlemen. Neither has been upon the witness stand, and it is a question whether persons who have not been called and are not charged with anything should be permitted at pleasure to interject communications of their own into our records. If they are essential they will be called, and then they may testify regarding that, and doubtless put it in in regular order. But I do not like to have statements from parties not charged with anything, and not witnesses, interjected into the middle of this testimony of Mr. Glavis, who is now, theoretically at least, still on the stand.

Mr. PEPPER. Mr. Chairman, what I am trying to deal with is a practical situation in aid of the difficulty in which my clients are placed.

Mr. OLMSTED. Then, does not Mr. Graham's suggestion meet your approval?

Mr. PEPPER. Mr. Graham's suggestion meets exactly the point I have endeavored to present, but I do not understand that Mr. Graham's suggestion differs in substance from the suggestion of Senator Root, made a few moments ago, that the matter should be placed at the disposal of the committee for such consideration as they choose to give it, without being offered as evidence, but merely that I may be in a position to know whether at the present time, or in the near future, either or both of these gentlemen should be wanted so far as the committee are advised.

Mr. OLMSTED. I think that is satisfactory to everybody.

Senator ROOT. Have we not come to the conclusion that Mr. Pepper can hand you a copy of this letter, and the committee will take steps to call for the original?

Mr. PEPPER. May I go so far as to make this assumption, subject to what Mr. Vertrees may have to say in the matter—that if the committee, having examined the document, make no present order respecting the necessity for the attendance of Messrs. Price and Shaw, that they may act upon the assumption that their departure from Washington in the near future will not be misconstrued, and that they will receive sufficient notice to enable them to return in case it is the desire of anybody that they should be examined? I simply want to know whether I may be assured that if these gentlemen do leave Washington at the present time they will receive sufficient notice to enable them to return before a time is fixed for their testimony.

Senator SUTHERLAND. Will any hardship result to your clients by remaining here until Monday?

Mr. PEPPER. No, sir.

Senator SUTHERLAND. Then I suggest that the paper be filed with the chairman and let us dispose of the matter if anything is to be done with it on Monday.

Mr. PEPPER. Thank you; that is satisfactory.

The CHAIRMAN. And I would supplement that with a suggestion that you give a copy of it to Mr. Vertrees.

Mr. PEPPER. Of course, sir, I shall do that if he has not already a copy.

The CHAIRMAN. File a copy with the committee and give a copy to Mr. Vertrees.

Mr. PEPPER. Shall I have it manifolded, as suggested by Mr. Graham?

The CHAIRMAN. I suppose you do not insist on that, Mr. Graham?

Mr. GRAHAM. No; I do not insist on it.

Mr. PEPPER. May I take the opportunity to present to you before adjournment a request on behalf of Mr. Pinchot for the production of certain documents, which will take the ordinary course?

The CHAIRMAN. Yes; please pass it up to the clerk and we will have the documents sent for.

(The request is as follows:)

PHILADELPHIA, PA., February 11, 1910.

HON. KNUTE NELSON,

Chairman of the Joint Committee of Senate and House.

SIR: On behalf of Mr. Gifford Pinchot, we beg that an order be made for the production of the following documents and for the attendance of the following witnesses:

DOCUMENTS.

(1) Office copy of letter of March 2, 1909, from Secretary Garfield to Representative Mondell in relation to withdrawals under the reclamation act, together with correspondence leading up to the said letter.

(2) All recommendations by the Reclamation Service to the Secretary of the Interior on and after December 4, 1908, to date, looking to the restoration of lands withdrawn for reclamation and power-site purposes.

(3) Draft of a letter submitted in March, 1909, by Director F. H. Newell to Secretary Ballinger embodying an order upon the Reclamation Service to recommend the restoration of power sites.

(4) Letter of March 19, 1909, from Senator Heyburn to Secretary Ballinger.

(5) Secretary Ballinger's reply to Senator Heyburn, dated March 20, 1909.

(6) Any letter or other document from the Secretary of the Interior submitting to the Attorney-General the question raised in the above-specified letter from Senator Heyburn.

(7) Brief in favor of executive withdrawals submitted March 29, 1909, by the Reclamation Service to Secretary Ballinger.

(8) Four letters dated on about April 13, 1909, from Secretary Ballinger to the Secretary of Agriculture in relation to requests for withdrawal of ranger stations.

(9) Letter of April 20, 1909, directing recommendation of rewithdrawals of power sites addressed by Secretary Ballinger to the Reclamation Service and then redirected by him to the Geological Survey.

(10) Letter of May 8, 1909, from James R. Garfield to the Forester.

(11) Letter of Secretary Ballinger to the Attorney-General submitting the question of the legality of ranger station or administrative site withdrawals and any opinion of the Attorney-General rendered thereupon.

(12) Letter dated on or about May 21, 1909, from Chief Engineer A. P. Davis to Supervising Engineer F. E. Weymouth.

(13) Office copy of letter of July 8, 1909, from Director F. H. Newell to Senator La Follette and the letter of Senator La Follette to which the Newell letter was reply.

(14) Volume 161, containing statistics of power sites, 1909, of the National Atlas on file in the Forest Service.

(15) All letters, telegrams, memoranda, and other documents relating to the Cunningham coal cases on file in the Department of Agriculture, including Forest Service.

(16) Report of the Forester of July 23, 1909, to the Secretary of Agriculture on forest work in Indian reservations.

(17) Letter of October 7, 1909, from the Forester to the Commissioner of Indian Affairs and the commissioner's reply thereto dated October 8, 1909.

(18) All letters between the Secretary of the Interior and the Secretary of Agriculture dealing with the termination of the Indian cooperative agreement.

(19) Copies of all letters written by Secretary Ballinger or by Private Secretary Carr (or by any one else on Secretary Ballinger's behalf) in December, 1909, and January, 1910, to publishers, editors, or reporters of newspapers asking or suggesting the communication to this committee of complaints against the Forest Service.

WITNESSES.

(1) Chief Engineer A. P. Davis.

(2) Director F. H. Newell.

(3) Hon. James R. Garfield.

We beg to reserve the right to call hereafter for other documents and for additional witnesses.

Very respectfully,

G. W. PEPPER,
NATHAN A. SMYTH,
Counsel for Mr. Pinchot.

The CHAIRMAN. Have you anything further to say, Mr. Vertrees?

Mr. VERTREES. Mr. Chairman, this committee was notified heretofore that Mr. Rasch would appear as one of the counsel for Mr. Ballinger. Mr. Rasch is present, and I desire to present him to the committee, that the committee may know that he does appear.

The CHAIRMAN. Mr. Rasch's appearance will be entered as one of the counsel in the case.

In view of the resolution of the committee to grant the request of Mr. Brandeis for a continuance until Monday, the committee stands adjourned till Monday at 10 o'clock a. m.

(Accordingly, at 11 o'clock a. m., the committee adjourned until Monday, February 14, 1910, at 10 o'clock a. m.)

MONDAY, FEBRUARY 14, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., February 14, 1910.

The Joint Committee to Investigate the Interior Department met pursuant to adjournment at 10 a. m.

Present, Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Purcell; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney and Assistant Secretary Pierce.

The CHAIRMAN. The committee will please come to order. Mr. Glavis will please take the stand. Does the counsel desire to examine him further in chief.

Mr. BRANDEIS. The further examination which I may have to make, which will be quite brief, I think, is in connection with documents some of which have not yet been produced. There are quite a large number of documents called for from the Secretary in our call of January 27, and in later calls, which have not been furnished, and I think it better to defer anything further I have to say until we get those documents. I should also like to have appear in the record the list of the papers which have already been produced, in order that we may properly take that up, and also have a reference to the time when these papers are produced.

The CHAIRMAN. That action will be taken. The clerk informs me he has furnished you with a list of the documents.

Mr. BRANDEIS. I have a list of some of the documents. I think some have been received since that time, but it seems to me in any event it should appear in the record.

The CHAIRMAN. We will have them put in the record.

Mr. BRANDEIS. I omitted at the opening, which I should have done, to thank the committee for its courtesy in postponing the hearing so I might keep my engagement in Illinois.

One other matter, Mr. Chairman. There are quite a number of corrections that appear on reading over the printed record that should be made. They are mostly typographical, but I think they ought to be made, so that the counsel who have not been present, Mr. Vertrees and Mr. Rasch, can not be misled by some errors, and they can either be made by Mr. Glavis now orally or he can submit a list of the corrections, which he would have to prepare.

The CHAIRMAN. I would suggest that he prepare a list and we would have the corrections made. I want to say further to counsel on both sides that I received a letter from Mr. Pepper, counsel for Mr. Shaw and Mr. Price, with reference to the request that was proffered to the committee at the last meeting, and that he has written me that Mr. Brandeis will appear for him in that matter, and that I have conferred with Mr. Brandeis this morning, who has indicated to me that the further consideration of that request will be postponed for the present. That is correct, is it not, Mr. Brandeis?

Mr. BRANDEIS. Yes, sir; for we believe that we can arrange for both Mr. Price and Mr. Shaw to be here whenever the committee desires to hear them.

Mr. VERTREES. As to the suggestion that corrections be made later, I wish to say that we object to that. If we are to proceed with the cross-examination, we do not want to be put in a situation where when questions are asked we will be met with the answer that it is an inaccuracy or typographical error in the statement.

The CHAIRMAN. I suppose he simply referred to typographical error or misstatement.

Mr. VERTREES. More than that. Of course, typographical errors would appear for themselves, but we have examined the record in the light of statements in it as they are printed, and if there are to be any material statements in anything beyond typographical errors, we wish to have them made before we proceed with the cross-examination.

The CHAIRMAN. I think that is the proper course, to have Mr. Brandeis present the corrections he desires to Mr. Vertrees, and if there is no disagreement, the corrections will be made.

Senator ROOT. Why should he not do it now?

Mr. BRANDEIS. Mr. Glavis can go right forward and do it. He has the record before him, and he has read all through the report of the testimony.

The CHAIRMAN. Let Mr. Glavis go ahead.

Mr. GLAVIS. Shall I call attention, also, to some of the questions that appear to be errors, as well as my answers?

The CHAIRMAN. Suppose you refer to the page.

Mr. BRANDEIS. Give the page first and then go right along.

Mr. GLAVIS. The first answer on page 4, the last word on the second line, and the first four words on the third line.

The CHAIRMAN. Will you read the words?

Mr. GLAVIS. "As we were out of his confidence." It should be "as the result of this conference."

Mr. OLMSTED. I distinctly understood the witness to say just what is said here—that is, because he and somebody else were out of his confidence. I may have misunderstood it.

Mr. GLAVIS. The person who went to Mr. Ballinger was Mr. Ballinger's client, and he went to him to confer with him in regard to making this escrow agreement.

Mr. OLMSTED. You want to say "as a result of this conference."

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Proceed, Mr. Glavis.

Mr. GLAVIS. At the bottom of page 6, the next to the last line, instead of "who had not yet provided to make such agreements," it should read "who had not yet proved up so as to make such agreements;" and the word "they," in the third line from the bottom, should be "there;" it should read "that there were agreements," etc; and the words "those claims," in the fourth line from the bottom, should be "The agreements were unlawful at the time they were prepared," etc. You could not prepare the claim.

Senator SUTHERLAND. It should be "agreement" instead of "claim?"

Mr. GLAVIS. Yes, sir.

On page 8, about the center of the page, there is a question by Senator Sutherland: "Before you pass from that, let me ask you why was Mr. Ballinger's name omitted?" It should be "let me ask you."

The CHAIRMAN. What is the correction there?

Mr. GLAVIS. I presume it ought to be "me."

Mr. GLAHAM. The correction is unimportant.

Mr. GLAVIS. On page 10, my answer "approximately a quarter section," about two-thirds of the way down: "Perhaps all of those are 160-acre claims. There is a 'parchment reef,' I will call it, of 5,200 acres," etc. "Parchment reef" should be "approximately."

On page 13, about two-thirds of the way down, my answer, "He is a newspaper reporter on the Seattle Star," should be "He was a newspaper reporter on the Seattle Star."

Mr. BRANDEIS. You were asked by the chairman if you could give that name. Perhaps you can give it now.

Mr. GLAVIS. The reporter's name is J. R. Singleton. His address is, I think, Oriental Building, Seattle, Wash.

On page 26, the next to the last question, Mr. Brandeis says, "a matter of confidence in connection with those denials." I think he intended to say "a matter of comparison."

Mr. OLMSTED. A question of Mr. Brandeis?

Mr. BRANDEIS. While he is looking I would like to correct, on page 16, a statement of my own in the second line from the bottom. It reads here "as a partial fact, those affidavits." I think it was "to get those ex parte, those affidavits."

Mr. GLAVIS. On page 31, about the center of the page: "Yes, sir; I made it on an envelope that I had in my pocket at the time as soon as he went out of the room." That should be "as soon as I went out of the room."

The second line on page 34, quoting the report which I made, I think the words "in order that you would know what they had to meet" were intended to be "in order that they would know what they had to meet."

The CHAIRMAN. How do you know that this is incorrect here as it is in the record?

Mr. GLAVIS. I usually tried to be very accurate in writing the letters, and I presume that is a mistake, as it doesn't make sense, but the record ought to be compared with them.

On page 42, my answer near the bottom of the page, about November 7 or 8, should be December 7 or 8. That was corrected a little later on, but I thought it might as well be corrected here.

On page 58 about the center of the page Mr. Brandeis asked me this question: "After receiving the letter from Mr. Dennett, about how soon after that did you proceed to Washington?" That was not a letter; it was a telegram. It shows that a little further down.

Senator ROOR. That is corrected immediately in the record. It is manifest the record is correct as to the question that was put and answered.

Mr. GLAVIS. Page 62, in my second answer, the name H. C. Henley should be H. C. Henry.

On page 71 my third answer should be "approved" instead of "proved for patent;" and also on the same page the answer "Yes, sir; January 23, 1907," should be "1908."

On page 80 about two-thirds of the way down Mr. Brandeis's statement "that telegram of July 4th" should be "that telegram of January 4."

On page 82, about two-thirds of the way down the chairman asks me, speaking of Mr. Carr: "Is he the private secretary to Commissioner Ballanger, also?" I replied, "Yes, sir." The question ought to be "Was he, etc."

On page 83 my second answer ought to read—I will read that answer the way I would like it to read. It has periods where they should not be. About in the center of it it begins—"They had not considered it, although it had been about five months, and by that time they (instead of 'we') had not taken any action with a view to patenting the claims"—and the period ought to be left out after "claims"—"when I was in Washington." "I saw that report, so I thought maybe it was some other report I had not seen when I was there." That is all right.

Mr. OLMSTED. The word "on" should be "I saw;" is that the idea?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Do I understand that all those periods in the matter you have read should be commas?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Read that answer as it should be.

Mr. OLMSTED. I would not read that whole answer again.

Senator ROOR. The better way is to have him make it as he thinks it should be, and let it go into his testimony as a substitution.

Mr. GLAVIS. "No, sir; there was not any other paper. When I wrote my letter of January 22 for the report referred to by the Assistant Commissioner in his letter of January 7, the report of August 2, 1907, by Special Agent Love, I had. I imagined Love had made another report on that date which I did not have, because I could not understand how they could consider that August 2, 1907, report as the basis of patenting these coal claims. They had not considered it, although it had been in the General Land Office about five months, and by that time they had not taken any action with a

view to patenting the claims. When I was in Washington I saw that report, so I thought maybe it was some other report that I had not seen when I was there."

On page 91 Mr. Brandeis near the top of the page introduces an affidavit of Cunningham of March 6 and also the journal—the Cunningham journal. The journal is given, and then following the copy of the journal on page 110 an affidavit of Cunningham appears, dated April 28, 1908. The affidavit of March 6 should have been placed there instead of this affidavit.

Mr. GRAHAM. Where is that affidavit, if it is in the record?

Mr. GLAVIS. Mr. Brandeis refers to it, I think. He says it runs from 474 to 491; I think it will be found there. I don't know.

Senator SUTHERLAND. That should be the affidavit of March 6?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Of what year?

Mr. GLAVIS. 1908.

Senator FLETCHER. This affidavit that is set out there should be stricken out?

Mr. BRANDEIS. It might as well stay there; it would not do any harm.

Senator FLETCHER. You just want to insert the other affidavit?

Mr. BRANDEIS. Yes, sir.

Mr. GLAVIS. On page 469 is the other report.

Mr. OLMSTED. Of the Senate document?

Mr. GLAVIS. Yes, sir. On page 111, near the bottom of the page, Mr. Brandeis reads a telegram, but I think the record will show that that is not fully stated; that is: "Wire date this office will receive report in Cunningham group Alaska coal entries. Answer by wire quick." "What is nature of report" is omitted. I think it is in the record.

Mr. GRAHAM. You say "what is nature of report" should be added to what is here?

Mr. GLAVIS. To that telegram; yes, sir.

Mr. MADISON. After the word "quick?"

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. That statement of Mr. Glavis is entirely correct. Nevertheless this record is correct, as I distinctly remember that is all Mr. Brandeis read.

Mr. GLAVIS. So do I; I forgot to call his attention to it. Then on page 112, in my second answer, that should be Clarence Cunningham instead of Frank Cunningham. Then on the same page, in the middle of the page, my answer should be "but he did not." That is speaking of Mr. Cunningham. My fear was that Mr. Cunningham might object to making an affidavit after what Governor Moore had said.

Mr. GRAHAM. At the end of the answer?

Mr. GLAVIS. Yes, sir; it should be "but he did not," instead of "but he did," at the end of the answer.

Mr. JAMES. The word "not" should be inserted.

Mr. GLAVIS. Yes, sir.

On page 121, near the bottom of the page, Mr. Brandeis asked me whether I was investigating the Green group with a view to setting aside their patents. The patents had not issued in the Green group. They were never issued.

Mr. GRAHAM. What is the correction?

Mr. GLAVIS. It should be filings or entries. The filing of the claims and not the patents.

Senator ROOT. That is not a correction; that is an explanation.

Senator PURCELL. Instead of "Yes, sir," what do you want there?

Mr. GLAVIS. It should be "claims" instead of "patents."

Senator PURCELL. Setting aside their claims—with a view to setting aside their claims?

Mr. GLAVIS. Yes, sir. On page 127, after quoting the letter from Mr. Cunningham, Mr. U. A. Brown should be Mr. Hugh A. Brown.

On page 130, at the bottom of the page, the letter received from Mr. Ballinger. I have not since seen the letter, but, as I recall it, there are a couple of words left out of the letter which I think ought to be inserted. In the last line of the letter "and will see you," I think, should read "and will hope to see you."

Senator FLINT. I certainly would suggest that Mr. Glavis will not correct this record, as far as letters are concerned, from memory.

Mr. GLAVIS. I merely call attention to it so that it might be compared, because I think that was omitted, but I am not sure.

On page 136 my first answer, "Relative to the Alaska Coal Company," should be "Relative to the Alaska coal cases." On the same page, the second answer from the bottom of the page, the record reads: "He said: 'There has only been a technical violation of the statute.'" I intended to say, "Where there has only been a technical violation of the statute."

On page 137, in the second answer the second line reads, "received his commission." This should be "resigned as commissioner."

On page 142, in the fourth line of the second answer the first word "and" should be "as"—"as we sold all the timber," instead of "and we sold all the timber."

On page 146, in the second answer and fifth line the word "would" should be omitted—"The Department of Justice to direct that he present this matter to the grand jury."

The CHAIRMAN. The word "would" should be stricken out?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. It means just the same thing.

Mr. GLAVIS. Well, then, I don't care whether it remains or not?

Mr. PURCELL. How is that, Mr. Glavis?

Mr. GLAVIS. "That he present this matter." The word "would" should be stricken out.

On page 148, in the last answer, the second line, the word "were" should be "went" and "to go" should be stricken out. It should read, "and they went to a clerk in Mr. Schwartz's office."

Mr. JAMES. "They were to go to a clerk" ought to be "they went to a clerk?"

Mr. GLAVIS. Yes, sir. On page 149, in the third question by Mr. Brandeis, he read a telegram of April 29. That should be "September 29." On the fifth line of the same page "Davis to Schwartz" should be "Glavis to Schwartz."

On page 150, at the center of the page, the date 1909 should be 1908. "The first time we discussed it personally was along in 1908" instead of "1909." In the third answer from the bottom of the same page the words "full examination" should be "field examination."

On page 153, in the fourth answer, the word "application" should be "affidavits." In the center of the same page the answer should read, the fifth line of that answer, "Well, all the books showed." The word "machinery" should be stricken out. In the sixth line the word "we," between dashes, should be stricken out.

The CHAIRMAN. What would be put in place of the word "we?"

Mr. GLAVIS. Nothing. "That they were paying the same" it should be. The word "men" in the same line should be "money." In the following line, "and he thought that when we made a field examination," the word "I" should be substituted for "he;" "and I thought," etc.

On page 155, in the eighth line from the top of the page, "June" should be "January." In the tenth line "then" should be "when," and it should read, "when I had the time." In the second answer from the bottom of the same page the word "on" should be "and"—should be "hearings and reports;" and in the same line "where" should be "in which." Then the rest of it is all right.

On page 156, in the third line from the bottom, "been" should be inserted between the words "had" and "given"—"I had been given special instructions."

On page 158, the third line from the bottom of the page, the words "one of" should be stricken and the word "when" inserted, so that it should read "but when those were sent out." On page 165, about two-thirds of the way from the bottom of the page, in my answer, "in the winter when we say we did not discuss the Alaska coal cases," it should read, "in the winter when I saw them," substituting "I" for "we." On page 169 my affidavit—and I would like to have a comparison made with the original, because I believe that Special Agent H. T. Jones corroborated that affidavit and it does not appear here—I would like the original to be examined in that connection.

Mr. GRAHAM. That is the short affidavit, the first one on the page?

Mr. GLAVIS. It is the last one on the page.

Senator PURCELL. It is partly on page 169 and partly on page 170.

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Do you mean they just left out this latter part, "State of Oregon," etc.?

Mr. GLAVIS. No, sir; there was a short affidavit corroborating my affidavit by Mr. Jones.

Mr. JAMES. Do you mean the affidavit that appears on page 121 of this document that has been furnished this morning?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Mr. Jones verifies under oath the affidavit given by Mr. Glavis, and I think it might go into the record, Mr. Chairman, if that is what he wants.

The CHAIRMAN. Mr. Brandeis, do you want that to go into the record?

Mr. BRANDEIS. I think it should be inserted. I may say at this point that there are certain other corrections in my own statement that are verbal that I have thought it unnecessary to call attention to at this time. I will submit the corrections to counsel, so that we will not consume the time of the committee now. There were several documents which were introduced, but which were not printed through inadvertence.

Mr. JAMES. I suggest that the witness read this affidavit to the stenographer and let it go into the record at this point.

Senator SUTHERLAND. Is there only one sentence that should be added?

Mr. GLAVIS. No; it is that short affidavit corroborating my own.

The CHAIRMAN. The stenographer may take it from this record here.

Mr. JAMES. I am perfectly willing, so that it goes into the record.

The affidavit is as follows:

STATE OF OREGON, *County of Multnomah, ss:*

Horace Tillard Jones, after being duly sworn on oath, deposes and says:

I am special agent of the General Land Office; that I have read the foregoing affidavit made by L. R. Glavis, and I know of my own personal knowledge that all the statements made therein are true.

(Signed) HORACE TILLARD JONES.

Subscribed and sworn to before me this 11th day of June, 1908.

(Signed) JOSEPHINE A. PATTEN,
Notary Public for Oregon.

Mr. GLAVIS. On page 199, the third answer, fifth line, the word "we" should be "he."

Senator PURCELL. So it would read "he started in at Portland, Oreg.," etc.

Mr. GLAVIS. Yes, sir. On page 200, the third line from the top of the page, the word "change" should be "chain." On page 201, in my sixth answer, first line, the word "I" should be "he," so as to read "he remained," etc.

Mr. GRAHAM. So that it will read "Mr. Sheridan arrived about July 21st and he remained," etc.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You want the word "I" changed to "he?"

Mr. GLAVIS. Yes, sir. One page 202, the third answer on that page, in the first line, the word "would" should be omitted, and in the second line of that answer the word "would" should be "did."

Mr. GRAHAM. Just read it as it should be.

Mr. GLAVIS. "Why, at the hearing which they have had the Government did introduce these affidavits as their own testimony in order to make out a prima facie case." On page 206, in the last answer, second line, the word "claimants" should be "claims." On page 210, about two-thirds from the top of the page, where I say "I believed that all these coal entrants," the word "entrants" should be "entries," and the same with respect to the second line of that answer, the word should be "entries" instead of "entrants."

The CHAIRMAN. That is evidently a typographical error.

Mr. GLAVIS. On page 220, second line from the top, the word "there" should be "they," and in the third the word "not" should be inserted between the words "should" and "have," so as to make it read "should not have the benefit of the act."

The CHAIRMAN. What did you say should be inserted in place of the word "there?"

Mr. GLAVIS. The word "there," the last word on that line, should be "they."

Mr. JAMES. And the word "not" should be inserted between "should" and "have?"

Mr. GLAVIS. Yes, sir. On page 225, the fifth answer, fourth line, the word "thing" should be "way," so as to read "the best way to prevent this." On page 226, two-thirds of the way down the page,

my answer "yes sir. I saw him that evening and he told me" should read "I saw him the next morning." I was speaking about the Attorney-General; I saw him the next morning. The word "evening" should be stricken out and the words "the next morning" should be substituted. On page 229, near the bottom of the page, my last answer on that page, second line, the word "nearly" should be stricken out and the word "both" substituted, so as to read "they were both quoted in full." On page 239, my last answer on that page, which reads "I think he referred to the affidavit he made," the word "he" between the words "affidavit" and "made" should be omitted. On page 240, my first answer, second line, the word "had" should be "would."

Senator PURCELL. "He would refer to the Attorney-General," etc.

Mr. GLAVIS. Yes, sir. On page 248, my second answer, fourth line, the word "get" should be stricken out and "have" substituted.

Senator PURCELL. So as to make it read "we did not expect to have an immediate hearing?"

Mr. GLAVIS. Yes, sir. On page 250, in which I say, "yes, sir; and I sent it to the President on September 3," it should be—I would like to explain that answer. I got the letter referred to; the letter was secured rather under my direction. I did not personally go to Juneau and get it. That letter was secured by Special Agent Bowman under directions from me. In the fifth answer on page 250 the word "visit" on the first line should be "letter," and the word "letter" on the next line should be "visit."

Mr. BRANDEIS. It should be, "because I did not get this letter until I returned from my visit."

Mr. GLAVIS. Yes. The word "letter" on the second line should be "visit," so as to read, "because I did not get this letter until I returned from my visit," and the third line of that same answer the word "it" should be inserted between "transmitted" and "to." "I transmitted it to the President." On page 252, about the center of the page, my answer was, "this whole report which has just been read was in reference to a Cunningham case." It should be to "the" Cunningham case; "the" should be inserted for "a." On page 258, the fourth answer from the bottom of the page, third line, the word "not" should be omitted, so as to read, "it was intended that they should proceed at once with the hearing." On page 259, second answer, it should read, "also the Forest Service," instead of "various." In the center of that page, my answer referring to a telegram of "July 6" should be "16." On page 260, in the fourth answer, the word "fact" should be "facts," and on the next line the word "go" should be omitted and the word "get" substituted—"I expected to get by the investigation," etc.

Mr. GRAHAM. "That I expected to get by the investigation."

Mr. GLAVIS. Yes. On page 282, the first word in the second line of my answer, the proper name "Heinny" should be "Heney," and the name should be changed to that spelling in the subsequent part of that answer. In the last line of that answer the word "out" should be inserted between "straighten" and the word "the," so as to make it read, "straighten out the matter." On page 282, the same page, the last answer, the proper name "Behring" should be "Behrens."

The CHAIRMAN. And the same correction should be made in two other places.

Mr. GLAVIS. In four other places. On page 284, in my second answer, first line, the word "they" should be inserted for "I."

Mr. GRAHAM. So as to make it read, "the first time they knew," etc. Is that correct?

Mr. GLAVIS. Yes, sir. On page 297, the second answer, first line, the word "use" should be substituted for "see," making it read, "I did not use any evidence," etc.; on the seventeenth line from the bottom of that page the word "places" should be "papers." The first line in the last paragraph of that page—

The CHAIRMAN. The first line of the last paragraph?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. What word do you wish to correct?

Mr. GLAVIS. The word "on" should be omitted and "in" substituted. On page 362, in the fourth answer from the bottom, the word "of" should be substituted between the words "support" and "Senator," so that it should read in this way, "that he had also the support of Senator Guggenheim." On page 363, fifth answer from the bottom of the page should read, "Oh, about eight hundred, practically all," instead of "entirely coal." On page 365, the fifth answer from the bottom should read, "December," instead of "November."

Mr. BRANDEIS. December, 1907.

Mr. GLAVIS. Yes, sir. On page 366, in my fourth answer from the top, "December" should be substituted for "November."

The CHAIRMAN. It should be, "December the 2d?"

Mr. GLAVIS. Yes, sir. On page 368, about the center of the page, the proper name "Henry" should be "Henley," and that name should be changed where it occurs again near the bottom of the page. On page 370, about the center of the page—"and the letter of March 22d," should be, "and the letter of March 2." On page 371, the fourth answer from the bottom of the page, second line, the word, "we," should be substituted for "he."

Senator PURCELL. So that it will read: "We made an affidavit," etc.

Mr. GLAVIS. Yes, sir. On page 376, the third answer from the bottom of the page, the word "forestry" should be omitted.

Mr. BRANDEIS. So as to make it read: "That I left the service."

Mr. GLAVIS. Yes.

Senator FLETCHER. How about page 377, in the middle of the page, where it is printed, "Dalton."

Mr. GLAVIS. That ought to be "Doughten." On page 378, the second line from the bottom, the word "affidavits" should be substituted for the word "records."

Mr. GRAHAM. Just read it as you want it.

Mr. GLAVIS. The way I would like the answer to be is, "No. There are hundreds of affidavits that are not filed in this record." On page 382, at the center of the page, my answer states here, "I do not know whether I did or not. There is so much about these Alaska decisions," etc. It should be, "Alaska cases." On page 384, in the third answer, it should read, "The initiation of the entry is the first step taken with a view to making the entry." On page 388, sixth answer from the top, the words, "I had been directed," should be changed to, "Had I been directed." In the seventh answer on that page, second line, the word "should" should be substituted for "would." I will read the answer in the way it ought to be: "I stated in the letter of May—I

think it was May 1—which has been in evidence, that the coal cases should not be delayed.” On page 389, second answer from the top, the answer reads, “No, sir; it was not. It was more urgent perhaps.” The word “not” should be omitted. That is all.

The CHAIRMAN. Gentlemen, you may proceed with the cross-examination.

Mr. VERTREES. Mr. Glavis, how long were you in the service?

Mr. GLAVIS. I was special agent from March or April, 1904, to September, 1909, and prior to that time, for about a year or a little over I was Chippewa land examiner in Minnesota.

Mr. VERTREES. Are you reasonably familiar with the conditions in Alaska—coal conditions?

Mr. GLAVIS. In what way?

Mr. VERTREES. As to quantity, use, and production.

The CHAIRMAN. Mr. Vertrees, please talk a little louder.

Mr. VERTREES. As to quantity, production, and the place in which it is procured.

Mr. GLAVIS. The only information I have on that point is record evidence and from what I have been told by experts who have been up there.

Mr. VERTREES. Have you examined the government records on that question?

Mr. GLAVIS. Mr. Andrew Kennedy explained to me as to the extent and I read the expert report of Mr. Hawkins.

Mr. VERTREES. You have not examined the official reports of the Geological Survey and the other departments of the Government with respect to that?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You do know in a general way, do you not, that the coal areas of Alaska are very large?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. There is a great deal of coal there?

Mr. GLAVIS. Yes, sir, I understand so.

Mr. VERTREES. I understand that. I merely want to get at your situation when you went to make these investigations. Do you know how many thousand square miles—

Mr. GLAVIS. Of what?

Mr. VERTREES. Of the coal area.

Mr. GLAVIS. In Alaska?

Mr. VERTREES. Yes?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You know nothing about that?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You only know in a general way, or have understood that they were very large, those coal areas, and very valuable?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now this Cunningham claim is located about how far from the coast?

Mr. GLAVIS. About 25 or 30 miles from Katalla; that is the nearest seaport, I think.

Mr. VERTREES. No means of transportation there as yet?

Mr. GLAVIS. I don't understand that there is.

Mr. VERTREES. Is there in any of those large coal fields that you have mentioned—are they not practically closed, as they have always been, for lack of transportation?

Mr. GLAVIS. I have never been up there, but the Alaska Central Railroad had been built a little ways, I understood; I don't know how far.

Mr. VERTREES. It does not go into this field does it?

Mr. GLAVIS. No, sir; I think that is the Matanuska field.

Mr. VERTREES. Precisely. What is the aggregate area of what is known as the Cunningham group of lands, how many acres?

Mr. GLAVIS. About 5,200 acres.

Mr. VERTREES. Something like 8 square miles would it be?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So that, as a practical matter, the lands covered by the Cunningham claims are a very small part, or a fractional part, of those coal areas aren't they?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. A mere patch upon the surface of the coal areas of Alaska?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Relatively speaking.

Mr. GLAVIS. Yes, sir; there are only thirty-three claims out of about eight or nine hundred claims.

Mr. VERTREES. There are about nine hundred claims and these only cover thirty-three?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In point of fact, at the time you first brought this to the attention of the department, those men had done all they could do; they had entered the lands, had declared and completed the entries, hadn't they, and paid their money?

Mr. GLAVIS. You mean they had done all they could do with a view to getting title?

Mr. VERTREES. With a view to getting patent.

Mr. GLAVIS. Yes, sir; before the Land Office, as to the action taken before the Land Office.

Mr. VERTREES. That is to say, they had made their declaration, filed the plats, and paid the money?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In the aggregate, something over \$50,000?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that had been the situation, hadn't it, some-time before you undertook to look into these matters?

Mr. GLAVIS. Why, I don't know just when the payments were made or when the cash certificates were issued on some of them.

Mr. VERTREES. I don't care for dates. The essential thing I want to know is the knowledge of the fact that before you came down in December, 1907, and a long time prior thereto, they had paid their money and had done everything toward the completion of their entries?

Mr. GLAVIS. I think some of them were not made—the proofs were not made—until along in October, 1907. That would only be a couple of months before.

Mr. VERTREES. At any rate, whether some of them had been filed two months or not, as a group they had paid their money before any investigation was had by you?

Mr. GLAVIS. By me; yes, sir.

Mr. VERTREES. By you. Now, had anyone else?

Mr. GLAVIS. Well, Mr. Jones and Mr. Love, in the summer of 1907, were making that preliminary investigation.

Mr. VERTREES. You don't catch my question; I mean had any other claimants completed their entries?

Mr. GLAVIS. Oh! At that time?

Mr. VERTREES. Yes.

Mr. GLAVIS. I can not say as to that; I am sure not. It seems to me that they were the first ones to make—that is, they started numbering them, 1, coal entry No. 1 and 2, and it would take the numerical order. The Cunningham claims would be the first 33 claims of the Alaska group.

Mr. VERTREES. So that in point of fact, they were the first that had paid, so far as you remember, and they were the first in order to be considered if they had applied?

Mr. GLAVIS. They were the first ones to have paid; yes, sir. Whether or not any others have been made since then I don't know.

Mr. VERTREES. I am not asking you about since then.

Mr. GLAVIS. I mean between the time they were made and the time I went to the commissioner.

Mr. VERTREES. At the time you brought this to the attention of the land office, that those coal claims should be investigated, the Alaskan claims, the situation was this, that the Cunningham group had completed their entries, and so far as you know, no one else had.

Mr. GLAVIS. I am not so sure as to that.

Mr. VERTREES. I said so far as you knew.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I mean to give you leeway there——

Mr. GLAVIS. I think there were a few others, but I am not sure.

Mr. VERTREES. A very few, if that is so?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the Cunningham people were the first?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That was the situation at the time the matter was brought to your attention, we will say, in December, 1907? Now passing, for the time, from those things, Mr. Glavis. On the 11th day of August, 1909, you presented a letter to the President of the United States in reference to the Alaskan matters?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then on November 13, 1909, there was an article appeared in a paper called Collier's Weekly, purporting to be by you?

Mr. GLAVIS. November 13?

Mr. VERTREES. November 13.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Is that right?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I wish to bring that to your attention especially. I here show you a publication entitled "Colliers; the National Weekly," bearing date of November 13, 1909, which contains, on page 15, an article entitled "The whitewashing of Ballinger. Are the Guggenheims in charge of the Department of the Interior? By L. R. Glavis."

Mr. GLAVIS. Yes, sir; I would like to explain that.

Mr. VERTREES. Wait a moment. I will get to that and I will give you ample opportunity. I wish to know if you are the author of that article?

Mr. GLAVIS. I am the author of the article, but I didn't have anything to do with writing the headings; I am not responsible for the headings of the article in any way, or the explanations of the different paragraphs.

Mr. VERTREES. You mean it is cut up into paragraphs with subheads?

Mr. GLAVIS. Yes, sir; the subheads I had nothing to do with.

Mr. VERTREES. You are not responsible for the subheads?

Mr. GLAVIS. No, sir. The first time I saw those subheads, or the title, was when this article was printed some two or three months afterwards.

Mr. VERTREES. Did you receive any compensation for that article?

Mr. GLAVIS. No, sir: not a cent.

Mr. VERTREES. Were you promised any compensation?

Mr. GLAVIS. No, sir; not a cent.

Mr. VERTREES. The work was done entirely gratuitously?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You have also made a statement of these matters before this committee, beginning January 20, 1909?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So that it appears that you have made three statements of facts bearing upon the action and conduct of the Interior Office, one in a letter to the President, one in Collier's Weekly, to which you have been referred, and the other here? That is correct isn't it Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You appeared here under no accusation yourself, did you—you came as a witness?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You brought your attorney, not because you expected any difficult questions would be asked you, but that he might aid you in delivering your end of it—is that correct?

Mr. GLAVIS. No. I expected when I came here to be fully cross-examined by the attorneys.

Mr. VERTREES. I am not asking about the cross-examination. I am on the matter of you coming here before us without any accusations of any kind made, or expected to be made, with an attorney to aid you in the presentation of your evidence.

Mr. GLAVIS. Yes, sir; but I merely wanted to give the committee the facts that I had.

Mr. VERTREES. You, yourself, have formulated no charge of any kind?

Mr. GLAVIS. No, sir.

Mr. VERTREES. In any of these documents?

Mr. GLAVIS. No, sir.

Mr. VERTREES. But you have contented yourself, and you have done this—you have made statements of facts, the different statements to which I have referred, leaving it to others to draw such inferences from those facts, and conclusions, as they had a mind to do?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you intentionally refrain from making any charge?

Mr. GLAVIS. I was not called upon to make any charge, that is that I felt would have any weight. I felt that the committee would act more on the facts than any mere statement I would make.

Mr. VERTREES. There was no committee when you presented the matter to the President, neither was there any committee when you presented it to the public in Collier's Weekly.

Mr. GLAVIS. No, sir.

Mr. VERTREES. The point I wish to get at is, in presenting these matters that way did you intentionally refrain from formulating any charge, a specific charge of any kind based on those statements?

Mr. GLAVIS. Yes, sir; I intended to do that.

Mr. VERTREES. Well now, they meant something to you, didn't they, the facts you have stated?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. It has been your business for years to investigate land cases, investigate fraud, and look with a suspicious eye for wrongdoing, hasn't it?

Mr. GLAVIS. No, sir; not exactly a suspicious eye. We often help and assist people in getting title to their claims when we find they are bona fide—

Mr. GRAHAM. What was the last part of your answer?

Mr. GLAVIS. It has been my duty to investigate fraud and investigate cases of any character of that kind.

Mr. GRAHAM. Pardon me just a moment. You were going to say something about helping people to get title. I wish you would finish that.

Mr. GLAVIS. It was our duty to help them, when we could, to get title to their claims, as much as it was to attack them. If we found a settler that was being harassed by people who had no right to do so, why, we would protect the settler.

Mr. VERTREES. I am leaving that for the present. What I wish to get is a statement from you as to this: If these statements you made, the facts you related both to the President and to the public, if they were a repetition of the same facts, if they did not mean something to you; if you didn't understand that they established something and proved something against somebody.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well now, what?

Mr. GLAVIS. What did they prove to me?

Mr. VERTREES. Yes.

Mr. GLAVIS. They proved to me that I didn't think the Interior Department was in safe hands.

Mr. VERTREES. My question is not as to the broad conclusion you reached as to the safety of hands, but what you understood those facts to prove as definite misconduct on the part of somebody.

Mr. GLAVIS. There was no charge of criminality. I don't think the statements prove that. You would have to take all the facts together and then form your opinion. You couldn't take any one definite statement of fact and draw a fair opinion. The entire statement is what convinced me.

Mr. VERTREES. Convinced you of what?

Mr. GLAVIS. That the Land Department was not in safe hands.

Mr. VERTREES. Was not in safe hands?

Mr. GLAVIS. Yes, sir; as to Alaska coal. As to other cases they would probably be all right, but I didn't think they were protecting the people's interests relative to the Alaska coal cases.

Mr. VERTREES. What I want to get at, Mr. Glavis, is not that general statement, but what officers you yourself, when you presented these matters to the public, understood those things would affect and how they affected them; that is to say, what they established that these officers had done in the way of official misconduct or corrupt conduct.

Mr. GLAVIS. Again, I would have to take the whole statement and point out each fact. You just want the officials affected by it?

Mr. VERTREES. Yes. What officials?

Mr. GLAVIS. Ballinger and Dennett would be the ones. There were others who took a little action in it and they would affect them so far as those actions went; otherwise it would not affect them.

Mr. VERTREES. Well, who were the others?

Mr. GLAVIS. Well, Schwartz took some action that I couldn't understand, and I think the worst action taken was the action taken by Assistant Secretary Pierce when he rendered that decision.

Mr. VERTREES. You have only answered me in a very general way. I want something a little more definite. First, I want to know whether, when you presented these facts to the President, to your mind they established corrupt conduct, or official misconduct on the part of anybody?

Mr. GLAVIS. Yes, sir; I thought they established official misconduct on the part of Secretary Ballinger and Commissioner Dennett.

Mr. VERTREES. Well, anyone else?

Mr. GLAVIS. They established it conclusively, I thought, as to those two men. But as to the others, I didn't form any opinion, because in my mind it depended entirely upon what answers they might make as to what was their real purpose for taking the actions they did.

Mr. VERTREES. Well, now, am I to understand, when you made these charges, to your mind they carried no evidence of misconduct or corrupt conduct on the part of any official excepting Secretary Ballinger and Commissioner Dennett?

Mr. GLAVIS. No. The report carried evidence of misconduct by Mr. Pierce and Mr. Schwartz, but I didn't draw the conclusion that it was conclusive against them.

Mr. VERTREES. I am not on the question of the conclusiveness; I haven't asked you that. I merely want to get whom you meant to accuse.

Mr. GLAVIS. My statement meant to accuse Ballinger and Dennett.

Mr. VERTREES. That is what I wanted to get at. Now, at that time Mr. Ballinger was Secretary of the Interior, wasn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. Frank Pierce was First Assistant Secretary?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Fred Dennett was Commissioner of the General Land Office; is that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. H. H. Schwartz was Chief of Field Service?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. M. D. McEniry was Chief of the Field Division?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Horace Tillard Jones was the special agent, wasn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. H. K. Love had been special agent, but was then out of the service; is that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. James M. Sheridan was special agent and is still in the service?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. Don M. Carr was the private secretary to the Secretary of the Interior?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. P. M. Mullin was register, wasn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. He is still in the service?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. John W. Dudley had been register, but has been since removed from office?

Mr. GLAVIS. I understand so; yes, sir.

Mr. VERTREES. Now, these persons—these officials—are named in various ways in your statement of facts, and, as I understand you, you have eliminated them, and that which you have stated reflected upon Secretary Ballinger and Mr. Dennett?

Mr. GLAVIS. My report to the President did.

Mr. VERTREES. I am not asking you about your report to the President. In your report to the public in Collier's Weekly and everything—

Mr. GLAVIS. You have been confining your questions to the report to the President. You asked me—

Mr. VERTREES. Perhaps I have. I have read you this list of officers and I wish you to say whom you understood the facts you detail to accuse of corrupt conduct or wrongdoing, or either.

Mr. GLAVIS. Misconduct. As to the corruptness, I have never made any charge of criminality or corrupt practice, because if I had sufficient evidence that warranted me in making such a charge I would have presented it to a grand jury and never would have gone to the President.

Mr. VERTREES. In other words, your frame of mind was such that if you believed that any officers were guilty of corrupt conduct you would have gone to a grand jury?

Mr. GLAVIS. It would have been my duty to do that.

Mr. VERTREES. I am not speaking about your duty—you would have done it?

Mr. GLAVIS. Yes, sir, as a public officer it would have been my duty.

Mr. VERTREES. But you would have done so? That is the point I want.

Mr. GLAVIS. Let me explain my answer. I will answer that yes, because that would have been my duty as a government official.

Mr. VERTREES. You are now giving me your reason. I asked you as to the act.

Mr. GLAVIS. I merely want to explain my answer.

Mr. VERTREES. The essential thing I want to get at is, that you didn't present these men before the grand jury because you didn't believe any of them had been guilty of corrupt conduct?

Mr. GLAVIS. There was no evidence as to that.

Mr. VERTREES. There was no evidence even to your mind of any corrupt conduct on the part of any of them?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You state that here, do you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Not one of them?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And the most that you did mean to accuse them of is what you call official misconduct; is that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Not of corrupt conduct, but of misconduct or impropriety?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Please define more accurately what you mean by that. You have relieved it from the field of criminality altogether.

Mr. GLAVIS. I have relieved it from the field of criminality because you have to show motives to show criminal acts to a certain extent, and there was no motive that I had any evidence of. The meaning that I make of misconduct is that they were not properly protecting the Government's interests as government officials should do.

Mr. VERTREES. So you wish to say to this committee that as the result of your investigations, you have observed nowhere a corrupt motive as to any of these officers; you state that, do you?

Mr. GLAVIS. Well, yes, sir; there was no evidence of it.

Mr. VERTREES. You saw no corrupt conduct on the part of any of them, but the most you wish to be understood as saying, the most you did say to the President, or meant to say to the President by your array of facts, and what you did mean to say to the country in your array of facts in Collier's Weekly, was simply that you did not think the affairs of the Government, that is those conducted by the Interior Office, were in safe hands?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is what you meant and all you did mean, isn't it, Mr. Glavis?

Mr. GLAVIS. Yes, sir; that they were not properly protecting the interests of the people.

Mr. VERTREES. That they were not properly protecting the interests of the people. That is all you did mean?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In what way; was it an error of judgment, or a mistake?

Mr. GLAVIS. No; I think it was—the facts showed it was intentional.

Mr. VERTREES. And yet you say it was not corrupt?

Mr. GLAVIS. Well, we probably do not give the same meaning to "corrupt;" we perhaps don't have the same view of "corrupt."

Mr. VERTREES. Perhaps so; give us your view of it.

Mr. GLAVIS. If a man acts corruptly, he acts criminally; that would warrant criminal action, and I did not think the evidence warranted that. For instance, when Secretary Ballinger agreed to sub-

mit the matter to the Attorney-General and agreed that it was the best thing to do, the proper thing to do, to have then turned around and have handed it to Mr. Pierce for a decision—that is not a charge of criminality; still, he didn't have the interests of the Government at heart in doing that.

Mr. VERTREES. That is what you mean to say, that he did not have the interest of the Government at heart.

Mr. GLAVIS. Yes, sir; he wasn't properly protecting the Government's interests.

Mr. VERTREES. In what way? That is what I am trying to get at now, what you mean to accuse and charge these gentlemen with—Mr. Frank Pierce was First Assistant Secretary, wasn't he?

Mr. GLAVIS. Yes, sir. I would prefer to have all the facts taken together and your own conclusions drawn. It would only be a conclusion on my part as to what this evidence shows.

Mr. VERTREES. True. And although ordinarily I would not ask for your conclusions, nevertheless I have asked them now, and I have understood you to say that you exonerate everybody except Secretary Ballinger and Mr. Commissioner Dennett, is that correct?

Mr. GLAVIS. No, sir; that is not correct.

Mr. VERTREES. Who else do you include in that?

Mr. GLAVIS. Do you think the evidence I gave involves—

Mr. VERTREES. Mr. Glavis, you go back. You have formulated no charge. I want to get the charge for the purpose, then, of taking that charge up to see what there is in it. You made a statement of facts from which your mind had evidently drawn some inference, and from which you intended the President to draw some inference, and from which you intended the public to draw an inference; is that correct?

Mr. GLAVIS. Yes, sir; I wanted them to draw their own inferences without any opinion from me. That is the reason I didn't give my opinion.

Mr. VERTREES. I understood you to say you did not draw the inference that any of these officials had been guilty of corrupt conduct?

Mr. GLAVIS. That is, of any corruptness in the meaning that I give corruptness; that is, there could be no criminal charge made from the actions they have taken. There was no evidence as to that.

Mr. VERTREES. The most you claim was that somebody had been guilty of official wrongdoing in some way?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, who were those persons—all that you mean to accuse?

Mr. GLAVIS. Which my evidence has mentioned?

Mr. VERTREES. Yes; as you understand it, and as you intended in the letter to mean?

Mr. GLAVIS. Oh, Mr. Dennett, Mr. Ballinger, and Mr. Pierce—I don't think Mr. Schwartz did anything criminal at all, or did anything that he was not under instructions to do. I have always liked Mr. Schwartz a great deal and have the highest regard for him, and I think if he hadn't had to act under the instructions of his superiors, the Alaskan cases would not be in danger.

Mr. VERTREES. You mean by that to say that Mr. Schwartz, if ordered, would do that which he regarded as improper and corrupt?

Mr. GLAVIS. I think he made some instructions last summer that were not proper, but I think he did it under instructions from his superiors. The facts showed he was acting on the instructions of his superiors.

Mr. VERTREES. The fact I want to get at is, do you charge Mr. Schwartz with any sort of intentional wrongdoing?

Mr. GLAVIS. No, sir. I think anything Mr. Schwartz did was thoughtless at the time. The telegrams he sent me were sent me on the spur of the moment. I don't think he gave it a thought, or weighed the evidence in the Cunningham cases when he directed me to proceed with the hearing.

Mr. VERTREES. Now, I understood you a moment ago to say that you acquitted Schwartz of any intentional wrongdoing whatsoever. You say if he did anything that your judgment does not approve, you, yourself, after examining all the evidence and knowing what you do, exonerate him of any intent to do any wrong, or any intent not to do as he did?

Mr. GLAVIS. It never entered my mind that he had done anything wrong. I think he made some very general statements in his report to the President, statements that were very cleverly drawn.

Mr. VERTREES. Let's not refer to his statement to the President. His official acts as Chief of the Field Service—

Mr. GLAVIS. That was an official act.

Mr. VERTREES. I mean before you left. I am dealing now with him officially and at the time these acts were being done which you say arrested your attention to such an extent that you presented them to the President. Now, if I understand you, you have stated to the committee that you do not mean to accuse Mr. Schwartz of any intentional wrongdoing of any kind. Have you not stated that?

Mr. GLAVIS. Yes, sir; I do not intend to accuse him of it.

Mr. VERTREES. And you don't mean the facts you have stated to have that effect, of accusing him, or of establishing any intentional wrongdoing on his part. Is that right?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That answers my question. Now you mentioned in this connection there were some things he did last summer that you didn't think were exactly the proper things to do. What were they?

Mr. GLAVIS. Those were the telegrams that he sent relative to directing me to proceed with the hearing in the Cunningham cases before the cases were ready to proceed. From the telegrams I have seen it appears that he was acting under instructions from the department in that respect.

Mr. VERTREES. Is there anything else on which you predicate your statement that Mr. Schwartz's conduct was, in your judgment, not entirely proper than those telegrams speeding the cases?

Mr. GLAVIS. No; that is all that I can think of now.

Mr. VERTREES. So that, repeating it somewhat, because it is important in this matter, it comes to this, that you do not, and never have, accused Mr. Schwartz, either publicly or in your own mind, of intentional wrongdoing or official misconduct. That is true, is it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The most you have meant by what you have stated, and by what you have testified to with reference to Schwartz,

was to say that his action in one particular respect you did not understand at the time and did not receive your approval, and that was in the matter of speeding or pushing the trial of these cases?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that is all that you have against Mr. Schwartz, and the only inference that could be drawn unfavorably of him is such as may be drawn from that one fact. Is that correct?

Mr. GLAVIS. Yes, sir; and the evidence that has been submitted in connection with my testimony will show that he was doing that under the instructions of the department.

Mr. VERTREES. That he was absolutely doing that under the instructions of the department?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What I am getting at is, you wish it to be understood that he is a good man, he has done nothing wrong, and you did not mean in these publications to say that he had?

Mr. GLAVIS. No, sir.

Mr. VERTREES. There is Mr. James M. Sheridan. What do you say about Mr. Sheridan?

Mr. GLAVIS. In what way?

Mr. VERTREES. I mean has he been guilty of any official misconduct in any way?

Mr. GLAVIS. Not that I know of.

Mr. VERTREES. Do you mean by any of the statements you have made to have inferences unfavorable to him drawn?

Mr. GLAVIS. No, sir.

Mr. VERTREES. What about Mr. Jones, Mr. Horace Tillard Jones?

Mr. GLAVIS. I never made any charge against him that I recall.

Mr. VERTREES. You know no grounds for making any, do you?

Mr. GLAVIS. No, sir; I believe he is absolutely honest.

Mr. VERTREES. What about Mr. Love?

Mr. GLAVIS. I don't know anything about Mr. Love except in a general way.

Mr. VERTREES. You have made no charge against him?

Mr. GLAVIS. I have made no charge against him.

Mr. VERTREES. And you have not meant for anything you have said to be made the basis of a charge, have you?

Mr. GLAVIS. No, sir. I did not feel that I was here to make charges.

Mr. VERTREES. You feel this, that you would make a statement of facts, formulating them, and putting them in a way from which all sorts of inferences could be drawn—

Mr. GRAHAM. Mr. Chairman, this witness labors under a hesitation of speech which almost amounts to a defect, and sometimes it appears to one not accustomed to him that he is through when he is not. I would like if he would be allowed to finish his answers.

Mr. VERTREES. Of course I do not mean to interrupt the witness, but he also shows a disposition to answer further than the question, and sometimes, perhaps, when I saw that disposition, I have interfered, but I will try to correct myself.

Now, Mr. Don M. Carr, you have mentioned in your testimony, have you meant in this presentation of facts to have inferences drawn from them unfavorable to Mr. Carr's upright official conduct?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You have not?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Mr. P. M. Mullin, what do you say about him?

Mr. GLAVIS. I have made no charge or intended no charge to be made against him.

Mr. VERTREES. I did not ask you if you had made a charge or formulated a charge, I am trying to get before this committee whether you want them to draw from the things you have stated, without formulating a charge, the inference that he had been guilty of any corrupt or official misconduct?

Mr. GLAVIS. No, sir; I do not intend that.

Mr. VERTREES. You did not mean that in your statements or these publications so far as he is concerned?

Mr. GLAVIS. No, sir.

Mr. VERTREES. What about Mr. Dudley, Mr. John W. Dudley?

Mr. GLAVIS. I did not intend it as to him either.

Mr. VERTREES. Now, Mr. McEniry, I believe is the way you pronounced it, what about Mr. McEniry?

Mr. GLAVIS. I do not make any charge against him. I always liked him very much and considered him a friend of mine.

Mr. VERTREES. You consider him a good man?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I have taken the names of all of those you have mentioned, holding various offices, that had to do with these transactions to which you have given such publicity; I have gone all through all of them except three, and that we might understand it, you, yourself, have made no charge against them. When you stated these facts, you did not mean for anything that reflected upon them officially in any way to be inferred? Is that correct?

Mr. GLAVIS. Those that we have named?

Mr. VERTREES. Those we have just named.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, that leaves, with those that you have mentioned, the following officers: Mr. K. A. Ballinger, who was Commissioner of the Land Office at the time you began this investigation and who is now Secretary of the Interior; Mr. Frank Pierce, who is First Assistant Secretary and has been since October, 1907; and Mr. Fred Dennett, Commissioner of the General Land Office, who was appointed March 5, 1908. Now, I will ask you with reference to those three, and first of all I want to ask you with reference to Mr. Pierce, whether you meant the inference to be drawn from what you have stated with reference to his actions in this matter relative to the Cunningham claims, whether you meant these facts to justify an unfavorable inference—that is, that he had acted improperly or corruptly?

Mr. GLAVIS. Why, I think that his action was improper; yes, sir.

Mr. VERTREES. Now, to what action do you refer, Mr. Glavis?

Mr. GLAVIS. I would like to withdraw that, about it being improper, and I would like to make this answer: That I think his decision—

Mr. VERTREES. Was erroneous?

Mr. GLAVIS. Very erroneous; yes, sir.

Mr. VERTREES. Well, we will get to the error of his decision presently. The point I am now on is the good faith of the man. Did you or not mean to impugn the integrity of his official action?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You did not?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And in the facts you have stated to the President and to the public you did not desire or intend an inference to be drawn unfavorable to his official integrity, did you?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Is there any other act or thing that Mr. Pierce did which you regard as erroneous or improper besides the one you have mentioned, namely, the giving of that opinion?

Mr. GLAVIS. Well, sir, that is the only action that I recall of him taking that I have knowledge of.

Mr. VERTREES. The only thing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is to say—to get it sharply, before we get to the facts, to get sharply the point before the committee which you have in mind,—I have understood you to say here previously that it was understood between you and the Secretary, and the others, that a paper would be formulated and prepared to take the opinion of the Attorney-General on, touching the act of 1908 and its proper construction, and that your understanding was that Mr. Secretary Ballinger was to present that to the Attorney-General for an opinion, but that instead of so doing he presented it to his First Assistant Secretary?

Mr. GLAVIS. Yes, sir; and told him to write the decision.

Mr. VERTREES. Told him to write the opinion?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Pierce being instructed to write and present an opinion as to the construction of that act did so?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that opinion you regard as erroneous?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the extent of Mr. Pierce's offending is, so far as you say and mean to be understood as saying, that he gave an erroneous opinion as to the construction of that act?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You mean no more than that in all you have stated with reference to Mr. Pierce, is that correct?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. The committee will take a recess until 2 o'clock.

AFTER RECESS.

2 P. M.

The CHAIRMAN. You may proceed, gentlemen.

(Thereupon Lewis R. Glavis resumed the stand for further cross-examination.)

Mr. VERTREES. I had questioned you, Mr. Glavis, with respect to all the officials whom you have mentioned, excepting Mr. Ballinger and Mr. Dennett. I now wish to ask you with reference to Mr. Dennett, who was Commissioner of the Land Office, I believe, during this time, was he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, you stated in your original examination that Mr. Dennett was crooked; you used that language somewhere. Now, what did you mean by that?

Mr. GLAVIS. I think I said in my direct examination that from his actions out in Seattle that I thought he was crooked.

Mr. VERTREES. That is what I am getting at. I have gone away for the present from the statement of facts, and am asking you for your opinion. That is your opinion, predicated upon these facts that you have seen fit to give to the President and the public?

Mr. GLAVIS. Well—

Mr. VERTREES. Wait one minute, please. Now, what I wish you to state to the committee is this: What facts that you have related, what statements that you have made, do you think, in your judgment, reflected upon the official integrity of Mr. Dennett?

Mr. GLAVIS. Well, Mr. Schwartz and I had talked several times about him always being friendly, speaking friendly—

Mr. VERTREES. Never mind that.

Mr. GLAVIS. Speaking friendly of the Hunt group.

Mr. VERTREES. Never mind that.

Mr. GLAVIS. That is one of the facts that led me to believe—

Mr. VERTREES. Perhaps you do not understand my question. What I asked you is this: What facts which you have stated to this committee for the purpose of having them draw an inference, without the formulation of any charge on your part—what of those facts which you have stated to your thinking and to your mind implied a reflection upon the official integrity on the part of Mr. Dennett.

Mr. GLAVIS. That is one of the statements that I made to this committee.

Mr. VERTREES. Then, if it is, proceed with it; what was it?

Mr. GLAVIS. Mr. Schwartz and I in June, 1909, had discussed the Alaska cases at Seattle, Wash. In that conversation he led me to believe that Dennett's position depended upon the Alaska coal investigation being concluded within this period of time. Also in that conversation he commented on the fact that whenever the Alaska coal cases were discussed in the General Land Office in Washington that Dennett always would say—when anything was said about the cancellation of them, that they might be canceled; but the Hunt group ought to be left—that is the H. R. Harriman group. In June, 1909, I wired Mr. Dennett and asked him whether any admissions had been made to him by Alaska coal claimants; that if there had been it might aid me in my investigation which I was making there. He replied the next day or the same day that there had not been any such admissions made. During that month, after the receipt of that telegram, I received affidavits which showed that there had been admissions made to him. Then Mr. Dennett arrived out there. Mr. Dennett, the first day or the next day after he arrived, told me about his troubles that he was having with a piece of real estate on Second avenue in Seattle; that the county or the city officials, I have forgotten which, were about to condemn part of it to broaden the street, I think it was. I said: "Why, Mr. Dennett, I thought that was all fixed up. A few days ago, when taking the affidavit of Mr. Behrens, Mr. Behrens told me that you were having some trouble, but that he had fixed it all right for you, and that he had written you about it." Mr. Dennett said: "Behrens, I don't know any such person as that." I said: "Mr. Behrens was one of the coal claimants in the Hunt group." "No," he said, "I do not know him at all; never heard of him." Well, I thought that was kind of strange. But a day or two

after that, I am not sure now, Behrens came in my office and wanted to see Dennett, and I told him he could see him, and he went in to see him and acted perfectly friendly. And it was that day or the next day that he asked Dennett out to lunch; whether he went or not I don't know.

Then shortly after that—well, at that time, just about that time, Dennett, we discussed these Alaska coal cases as soon as he got there, and I told him that the Cunningham cases were not prepared to go to trial, and asked him to go over the evidence itself. I had the records all prepared then to turn over to Mr. Sheridan. I said: "You go over the evidence yourself and see who is right, whether I am right or whether your office is right in Washington;" and he would not do that. So then Mr. Spalding came to me—he was a special agent or the special disbursing officer then, I have forgotten which, in my office; but when Dennett arrived he asked Spalding to attend to some of his typewriting and do his clerical work for him while he was there, and Spalding came to me and said that Dennett was writing peculiar letters, or funny letters, I don't know just how he put it, about the Alaska coal cases; and putting these other things together, I told Spalding to give me copies of them, and he did. Those copies of letters that he gave me are in the record, and I think they clearly show that he was not in sympathy with the investigation of the Alaska coal cases or the cancellation of the entries. I think they show that he was disappointed at the result of Attorney-General Wickersham's decision. He states in one of the letters that he did not blame me for making an unfavorable report, because I could not do anything else in view of what Attorney-General Wickersham had decided. And those actions, I thought, showed him entirely unfaithful to protect the Government's interest in the Alaska coal cases. I think that he surely would not have done that had it been his own property that he was trying to protect.

And then a day or two after that, about July 26 or July 27, I wrote him a letter about it, about him giving the status of my investigations, and also calling his attention to the fact that he had denied that the claimants had made any admissions to him, and that since then they had made statements to me in which they said that they had told Mr. Dennett in May, 1908—in the spring of 1908—the same thing. Some of the statements they made to me would show that they were acting under a conspiracy to acquire coal lands contrary to law. Until that summer of 1909 I had never been able to get anything—that is, any admissions from the coal claimants, those in the Hunt group, in which they would admit that they had such unlawful arrangements, and he placed me in the position, or placed himself in the position—he being the chief of police and could go out and get evidence, and knowing where the fugitive was all the time. That is the position he placed me in, and I did not think that was a proper way to protect the Government's interest. Those are the things that I think; and further than that, the fact—let us see—and another inference can be drawn from the statement I have made, and the evidence submitted here is that Senator Guggenheim in Colorado had gone to see the President protesting against the appointment of a man from his own State for the position which Mr. Dennett then occupied. Before I got that letter Mr. Eckels, of the Morgan-Guggenheim interest, had come to me and told me what a great necessity

there was for the mining of the Alaska coal for their smelters and railroads that they were building, and that they were prepared to go ahead with the building of those railroads. And those facts, taken together, and the fact that he—there are so many facts it is hard to put them in order, and I perhaps may overlook some of them.

But another one that occurs to me now is the evidence also shows that he was in conference with Secretary Ballinger with reference to these coal cases. In view of the uncertainty of his position and all I felt that his whole action showed that he was no more than a tool of Secretary Ballinger, and that he would do anything that Mr. Ballinger would ask him to do.

Mr. VERTREES. Is there anything else about Mr. Dennett? Do you know of any other fact or thing that you wish to submit?

Mr. GLAVIS. I do not think of any right now.

Mr. VERTREES. If there are any, they are not of sufficient strength and importance to impress you at the present time?

Mr. GLAVIS. Well, they may be of very great importance.

Mr. VERTREES. You can not recall them if they are?

Mr. GLAVIS. I would have to go right through the record to see if they were.

Mr. VERTREES. So much for Mr. Dennett, and we will pass from the facts you have stated and the opinion you have expressed for the present to Mr. Secretary Ballinger. Now, of these facts or statements which you have made here to the committee which of them do you intend and understand to reflect upon him, and what do they show, to your thinking?

Mr. GLAVIS. Well, I will try to summarize them and put them in chronological order if I can.

The first action is the Wilson Coal Company case. That, I think, shows, while it was a long time ago and when people might not have thought of such things, that his act in that case was a participation—

Mr. VERTREES. What was that act, Mr. Glavis?

Mr. GLAVIS. Of drawing up escrow agreements to turn over coal claims that had not at that time and, in fact, have not since been proved up; turning over those to his clients—agreements that they would be turned over. That, as a matter of fact, is criminal, although the statute of limitations wiped it out. The evidence, perhaps, is not quite clear. The record in the Wilson Coal Company case will speak for itself in that. I think Mr. Battle has brought that down from Seattle.

Then his expressions in the summer of 1907 to Jones that such acts, unlawful acts that had been committed, and which Jones outlined in his report to me of August 2, 1907—

Mr. COTTON. December 2.

Mr. GLAVIS. December 2, 1907, shows it to be a violation of the coal-land laws. His remark after that statement of facts and admission by one of the claimants that such was the case, that he was going to come down here and see what Congress could do to help these people to get the patents, after knowing that they had entered into these unlawful and fraudulent agreements.

And then the next step would be his action—and I think one of the most important facts to show that he is not loyal to his trust and is not faithful to the people is this one: His action, after giving me a

full right to investigate and full instructions to investigate all the Alaska coal cases, to take up personally the report of Love, of August 2, 1907, about ten days after I had the conference with him, and he had seen the necessity for making a thorough investigation, to take up this Love report of August 2, 1907, and deliberately order the claims to proceed to patent-upon such a report. That report had been in the files for nearly six months at that time, although the clerk of the office had not taken it up. And especially after that report, because that would not to my mind, or to the mind of a person who had passed upon favorable and unfavorable reports of special agents—I guess I have passed some thousands of them—that would not in itself warrant a favorable recommendation, because it in fact showed that there had been an understanding prior to the making of the entry; it gave every reason to believe that such had been the case, and it suggested fraud rather than suggested that there was really any full compliance with the law.

The next step that I think can be inferred that he was not trying to protect the people's rights was the fact that he appeared before a committee, the Public Lands Committee in the House, I think, and discussed the Cale bill, and spoke in favor of it, and that would have carried out his statements to Special Agent Jones in the summer of 1907, that he would do what he could to secure legislation that would enable these people who had entered into these fraudulent agreements to secure title to their claims; because that act, if passed in the form that it was presented to Congress, would have validated those fraudulent agreements.

The CHAIRMAN That was while he was commissioner, was it not?

Mr. GLAVIS. Yes, sir; March 2, I think, 1908, or March 3. The last day or the day before he resigned as commissioner.

The CHAIRMAN. Did not Secretary Garfield also appear before the committee favoring that bill?

Mr. GLAVIS. No, sir; not at that time. I think he objected to some of the features of that bill which Mr. Ballinger had urged. But the record will show that; I am not sure on that. That is my memory.

The next step that Mr. Ballinger took which was unprofessional and is considered as such by members of the bar, and I know of no attorney in my acquaintance that would stoop to a thing of that kind, was after having been placed in the position as representing the Government in the Alaska coal cases and having knowledge of the character of the investigation that had that far progressed, to have deliberately gone around and represented the other side in those cases. I do not mean merely the Cunningham cases, but also the Green group, in which Mr. Jones had taken, I think, six affidavits; he also acted as arbitrator, I guess you would call it, in an agreement entered into by H. R. Harriman and a man named John Hartline, covering the rights of Harriman to purchase about ten or twelve coal claims.

His action asking me—I at that time being in the field, when he was in politics arranging for campaign contributions—asking me to wait until after the campaign was over to make my investigation of those cases did not show that he had the interests of the Government and the people at heart but had a selfish interest.

Mr. OLMSTED. Was he an officer of the Government at that time?

Mr. GLAVIS. No, sir; he was attorney for some of those coal claimants, and on the committee getting campaign funds.

Another step that I think showed he was unfaithful to the people was the fact that after hearing our conference, of Mr. Dennett and Mr. Schwartz and myself as to the necessity for an opinion of the construction of the law of May, 1908, and directions to Mr. Schwartz and myself to prepare a letter for his signature, to go to the Attorney-General and after this official conference and my conversation with him in which he agreed it would be far more advisable for the Attorney-General to render such an opinion than for him to do so or for his department to do so, and to then deliberately change his mind for some reason and turn the matter over to a subordinate of his department. Surely if he had the interests of the people at heart, or if the Alaska coal lands were his own personal property and he felt that a decision of this construction of the statute would determine whether or not he was to have the coal lands or whether somebody else would have them, he would naturally have consulted the highest legal authority that he could secure. But he did not do that, after recognizing the necessity for it and agreeing to do it.

While there is nothing in any of these things upon which a criminal charge could be predicated, still I think it was far more cowardly for him to take the action that he did than if a man actually stole his money, for which he could be convicted.

Then the next statement that I can recall now—in fact, in July when I went to see Mr. Ballinger—I think it was July 16, 1909, I went to see Mr. Ballinger in his office at Seattle, after I had received instructions, definite instructions, that they would proceed immediately with the hearings; at that time, when I outlined to him the necessity for using every safeguard to protect the Government's interests before acquiring title to these lands, he knew the weaknesses of our case. The only weakness was the affidavit that he had prepared for Cunningham in which he tried to belittle the evidence and affidavits and tried to explain away the affidavits that I had secured. He did not then take any action himself to have a postponement of the order for a hearing.

I think that these statements of the evidence is all that I can recall at this time that led me to believe that he is an unfit man for the office and is not faithful to his trusts or loyal to the people in them.

Mr. VERTREES. Now, you have recapitulated the facts that you have stated, and you have also stated your inference from those facts. I ask you now if you know of any other matter or thing with reference to Mr. Secretary Ballinger which you have not stated to the committee heretofore, tending to show official wrongdoing on his part according to your conception?

Mr. GLAVIS. Well, I do not think of anything now. It is very hard for a person, for an attorney, to outline a conspiracy or a statement of this kind—

Mr. VERTREES. I did not ask you to outline any conspiracy, Mr. Glavis, I asked you—

Mr. GLAVIS. I would like to finish my answer.

Mr. VERTREES. You do not need express to me that I am outlining things. I prefer that you answer my questions and then—

Mr. GLAVIS. Can't I make my answer before—

Mr. VERTREES. Mr. Chairman, I object to his going on a discussion about the difficulties of attorneys. I asked him specifically if there was any other matter or thing that he had not already stated

to this committee within his knowledge relative to the management or the mismanagement of the Land Office of the Interior Department, and if there was anything to state it. He then proceeds to tell me about the difficulty an attorney would have in marshaling facts and making an argument. Of course, I understand that; but we did not ask him for that.

Mr. GRAHAM. The thought I had was that the witness was about to state that it was difficult under the facts and the circumstances to exhaust the subject; if that is what he was going to say, I think it would be a relative answer.

The CHAIRMAN. I think the witness ought to answer the question, but after he answers it he can make such explanation as he sees fit.

Mr. VERTREES. I repeat the question. I did not ask you to exhaust the subject, and I did not ask you to state the difficulties of attorneys. I asked you to state whether there was any particular fact or thing within your knowledge that you have not already related.

Mr. GLAVIS. I do not remember at this time anything additional to the statement that I have made; but as this subject covered nearly two years and the documents are quite voluminous, I may have omitted some important features in outlining the inferences from the facts that I think can be drawn to show that Mr. Ballinger is not faithful and loyal to his trust.

Mr. VERTREES. Yes. I will ask you the same question with reference to Mr. Dennett, whether there is any other fact or matter or thing within your knowledge that you have not stated that tends in any wise to show that Mr. Dennett is unfaithful to his trust or guilty of misconduct.

Mr. GLAVIS. My answer would be just the same as that about Mr. Ballinger.

Mr. VERTREES. Just the same?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, as we understand it you have come down to this—you have stated those matters and things which to your mind tend to show misconduct on the part of the Secretary and on the part of the commissioner, and I believe those are the only two which you ask us to understand these facts affect; is that right?

Mr. GLAVIS. Well, they are the two most important; I do not think anyone else, the subordinates, would have done any acts if they had been done for themselves.

Mr. VERTREES. That is not an answer to my question.

Mr. GLAVIS. Well——

Mr. VERTREES. You may say no or yes, either.

Mr. GLAVIS. Well, I will say no, and then I would like to explain that.

Mr. VERTREES. Certainly.

Mr. GLAVIS. In connection with the decision that Mr. Pierce rendered I would like to say this, that if he rendered that decision without being influenced by Mr. Ballinger——

Mr. VERTREES. Hold on a moment. Mr. Chairman, I will have to object to that. He is proceeding now merely argumentatively, that if he had rendered it under such facts and circumstances——

Mr. BRANDEIS. I would like to hear the question read to which this witness has answered and see whether it is not a fair answer.

Mr. MADISON. He answered that question in the negative. He gave a direct response, and then asked for the privilege that is accorded to every witness to explain his answers. He certainly ought to be permitted to do that.

Senator FLETCHER. That is perfectly proper.

Mr. MADISON. It is the rule that is applied by every court, that having given a direct answer, the witness may then explain.

Mr. VERTREES. The explanation ought to be a matter of fact, and not an opinion.

Mr. MADISON. Yes; but we must take into consideration this fact, that this witness has been repeatedly asked for conclusions and things which are usually stated by counsel, and therefore he must have the widest scope in his answers.

The CHAIRMAN. Proceed to answer the question.

Mr. GLAVIS. Read it as far as I have gone, please.

Mr. MADISON. I think, Mr. Glavis, that you ought to confine your answers just as much as you can—I am expressing my own opinion, but I think it is no doubt the opinion of the rest of the committee—to the questions that I ask you; make them responsive.

Mr. GLAVIS. I am trying to.

(The stenographer read the answer, as follows:)

In connection with the decision that Mr. Pierce rendered I would like to say this, that if he rendered that decision without being influenced by Mr. Ballinger—

Mr. VERTREES. I submit, Mr. Chairman, if that is an explanation of anything?

Mr. GLAVIS. I have given both sides.

The CHAIRMAN. I want to say to counsel that we have heretofore allowed a great deal of latitude in this examination, and in view of the fact that we are an investigating committee rather than a court we have felt that it would not do to apply technical rules of law; and we can simply say that we hope counsel will keep as much within the rules as possible, and the same in respect to the witness.

Now, proceed.

Mr. GLAVIS. If Mr. Pierce rendered that decision uninfluenced by anyone, why, I think his construction of the law is such that shows him to be unfit to hold the position that he does as Assistant Secretary of the Interior, because when I showed that decision to Mr. Henry M. Hoyt, the attorney-general of Porto Rico, it did not take him long to say that it was not a proper construction of the statute. Mr. Schwartz's views show that it was not a proper construction of the statute, and when Mr. Hoyt saw the Attorney-General about it and explained the situation to him—explained the points of law—it did not take him long to see that it was not in accordance with the statutes. And, as I say, if he did that I think he is incompetent, if that was his legal opinion. On the other hand, if he acted under instructions in writing that decision, I think he also should not be permitted to hold the position that he does.

Mr. VERTREES. Do you mean to make any statement as to the conditions under which it was written—do you know?

Mr. GLAVIS. I do not know.

Mr. VERTREES. You do not know, so you make no statement on that point?

Mr. GLAVIS. It was either one or the other; it could not have been any other.

Mr. VERTREES. Well, now, we understand it. Is there any other matter or thing with reference to Mr. Pierce and that opinion which you say either shows he was incompetent or that he was amenable to improper directions?

Mr. GLAVIS. No, sir.

Mr. VERTREES. So that you have now stated everything? We understand it. On the 31st of January your counsel called on this committee for an order for the production of a number of documents and writings for the use of the committee. I find on page 319 of the record that among other things you called for were "all letters and other papers now or formerly in the Juneau, Alaska, land office relating to the Cunningham claims, so called, and particularly all communications from and copies of all communications to Clarence Cunningham. Also all the papers relating to Special Agent Bowman in 1909, and for which receipt was given by him, including among the others a letter dated January 15, 1908, from the said Cunningham to the register and receiver of the said office."

You suggested to your counsel, did you not, to call for those papers?

Mr. GLAVIS. Yes, sir. Another important feature that I think showed Mr. Ballinger to be unfit to hold the office that he does—I stated in outlining the various facts that I think show him to be unfit and unfaithful to the people in this matter that I would perhaps overlook some of them.

Now, I think of another thing that makes me think he is unfit. It is this: The register and receiver of the Juneau land office had refused to allow certain cold declaratory statements because within the time allowed them from the date of withdrawal by President Roosevelt, November 12, 1906, they were allowed about fifteen months—I do not know the exact time, but it was over a year—all locations of coal claims were permitted to be filed in the Juneau office within this period, provided they had located prior to the date of the President's withdrawal. There were a number of claimants alleged to have held claims there prior to November 12, 1906, but who had not made a filing in the local land office within the fifteen months or so allowed by the regulations; and they offered their filings after this period had elapsed, and the local land office properly rejected and refused to allow them. They then appealed to Mr. Ballinger, who was practicing law in Seattle, and they got him to write a letter to the commissioner—at least I do not know whether they got him to write the letter, but he wrote a letter to the Commissioner of the General Land Office, Mr. Dennett, and asked him if he would allow these filings to be made, and this was done.

One of the letters among those called for explains that, and it is a copy of a letter written by Mr. Dennett to Mr. Ballinger, and that will explain it really better than I can.

Those claims, as I recall, were in the Green group, a group which was represented by Judge Ballinger, and it draws this action, draws inference to this effect, that in drawing the articles of incorporation and bringing the entrymen in the Green group, under the act of May 28, 1908, it was necessary that the claims should be in a certain length and a certain width, and it might have been that when entering these companies found that there were vacant spots in those tracts which would be necessarily filled in, and that these people had been

secured to fill in those missing gaps. Of course, that is merely an instance.

There may be other little things that I have overlooked to state.

Mr. VERTREES. Now, we will recur to my question, Mr. Glavis, and that was if your counsel did not ask for those letters at your instance and suggestion, with reference to those letters especially under paragraph 10? I understood you to say they did.

Mr. GLAVIS. They probably thought of some, but I think I suggested pretty nearly all of them.

Mr. VERTREES. Well, those especially indicated in paragraph 10 I am asking you about. They knew nothing about them at all until you told them about them, did they?

Mr. GLAVIS. Read that number 10.

Mr. VERTREES. That is on page 319.

Mr. GLAVIS. No, sir; I told them about those letters.

Mr. VERTREES. Now, those letters had been sent down from Juneau to the register and receiver at Seattle, had they not?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Hadn't they been brought down there by Special Agent Arthur Bowman?

Mr. GLAVIS. Yes, sir; and that is why I also suggested that they ask for Mr. Bowman to be subpoenaed, because——

Mr. VERTREES. Now, the question is, had they not been brought down there by Special Agent Bowman on August 10, 1909?

Mr. JAMES. What were you saying about Mr. Bowman?

Mr. GLAVIS. I said that I also suggested that Mr. Bowman be subpoenaed on that account, because they had tried to charge him with having delivered them, or they tried to show that if he did not have them I had them, and I wanted that brought out fully here before the investigating committee.

Mr. VERTREES. Well, now, we will go back to my question. I asked you if they had not been brought down from Juneau to Seattle by Mr. Bowman some time about the 10th of August, 1909.

Mr. GLAVIS. Yes, sir; it was in August, 1909.

Mr. VERTREES. There were quite a number of letters, among which were these that that paragraph called for; that is right, isn't it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And they were brought by Mr. Bowman and left in your office, were they not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You saw them there, did you not?

Mr. GLAVIS. I saw them when I came back from seeing the President.

Mr. VERTREES. You got back about the 1st of September, 1909, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Bowman wrote you he had gone, had he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And he wrote you about the letters, and that they were there?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then you——

Mr. GLAVIS. I just vaguely recall that letter.

Mr. VERTREES. You think there was such a letter?

Mr. GLAVIS. Yes; I am sure there was. He wrote about in a general way of what he found in Juneau.

Mr. VERTREES. Who was your successor in office out there?

Mr. GLAVIS. Mr. Andrew Christensen.

Mr. VERTREES. You were acquainted with him personally?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you were at Seattle at the time of your removal?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, about what time did he receive instructions to take charge of the office as your successor; or, to be specific, was it not on the 16th of September that he received instructions to take charge of the field division of which you were chief?

Mr. GLAVIS. I think it was either the 16th or the 17th. The telegram stated that he was to give me receipts for the records in my possession.

Mr. VERTREES. And the 16th and the 17th were spent in preparing receipts?

Mr. GLAVIS. Yes, sir; and the 19th, and then we were not through, and there were quite a number of papers that I wanted specifically listed.

Mr. VERTREES. You were discharged on the 18th?

Mr. GLAVIS. I have not finished my answer.

Mr. OLMSTED. Go ahead.

Mr. GLAVIS. The day that my dismissal took place, it was Saturday, and we had not finished listing those papers, and of course the less important papers, such as affidavits and reports and miscellaneous letters and all that I did not attach any importance to, we could not list specifically.

Senator SUTHERLAND. Mr. Chairman, I would suggest that all these details of this matter should not go into this record. He has asked a specific question, as to when this was done.

Mr. BRANDEIS. If the question is read you will see that he asked a question to which the answer was and could not be otherwise than an explanation. May he read the question?

Senator SUTHERLAND. Now the witness is going into a lot of detail as to why he did and why he did not do certain things, and why he did not inquire into something, and it occurs to me that it is a waste of the time of the committee.

Mr. JAMES. He has made an inquiry of the witness as to certain documents that were brought from the Juneau land office.

Senator SUTHERLAND. He asked him if certain things can be done.

Mr. JAMES. I understand that, but the witness can also answer and state what papers he got receipts for from this land office.

Mr. GRAHAM. The question assumes something that was not exactly so—that the 16th and 17th were devoted to the taking of receipts. That is only partially true, as the witness has explained. So as to the 18th and 19th, and he went on to tell what time was occupied in that way. I do not know what it would lead to. The fault was in the assumption of the question that the two days were taken in the matter of the receipts.

Senator SUTHERLAND. He had already stated that two days were devoted to it, and said what he had to say on that subject.

Mr. VERTREES. How many days were occupied in taking receipts and delivering the papers?

Mr. GLAVIS. Do you want me to finish my answer?

Mr. VERTREES. I thought that you were answering a great deal more than the question. It is for the committee to determine, of course.

Mr. GLAVIS. We worked, I think it was on the 17th and 18th, I do not recall the dates now, but my daily reports will show whether we started on the 16th; but at the time I left the service—that is, the time my dismissal took place—we had not completed the listing of all the papers, and especially some papers which I wanted listed fully, showing that they actually existed in the files of the land office.

Mr. VERTREES. You were dismissed when, on the 18th?

Mr. GLAVIS. Either the 18th or 19th; I have forgotten now.

Mr. VERTREES. You have stated to the committee that whether it was the 18th or 19th, you had not completed the listing at that time?

Mr. GLAVIS. No, sir. Do you want me to explain?

Mr. VERTREES. No, I do not, yet. I will give you a chance to explain later. It came about, did it not, that finally, and by the 19th or 20th, or somewhere along there, that the thing was assumed to be concluded, was it not?

Mr. GLAVIS. It was not assumed to be concluded until it was concluded.

Mr. VERTREES. Was it concluded?

Mr. GLAVIS. No, sir; because we had not finished listing those more important papers at the time my service ended.

Mr. VERTREES. Did you finish listing them and turning them over at some time?

Mr. GLAVIS. No, sir; but I want to explain now how that was. The last day that I was in the service, in the afternoon, I had not completed the listing of those papers, so I told Mr. Christenson that I had some of the important papers that I did not want to turn over to him until I had received a receipt for them, because they were the only papers I had to justify me; that is, some of the papers covered more or less important instructions, and all that justified me in taking the action I had in going to the President, and I intended that I should have definite receipt that such papers existed, so that afterwards nothing could ever be said to the effect that they did not exist. He wanted me to turn them over to him, and I told him I would not turn them over to him but would give them to the special agent, Spaulding, and that I would dictate them that night to him and let him list them, and if he would agree, to let him write them up alone, and Christenson agreed to that.

That night I dictated most of those papers—I do not know whether it was all of them or not—but I believe I did dictate all of them to Spaulding. Sunday morning was the next day and Spaulding went up to get his typewriter and write them up; that is, he went home because I had asked Spaulding not to take the papers down to the office because I felt they were trying to do some mean and treacherous thing and I did not want to take any chances with them. He went to the office, but they would not let him take his machine out of the office, and also took his stenographer's notebook from him containing the list of those documents. Afterwards Christensen came to me—he wrote me a letter, in fact—demanding the return of the papers and I saw him that afternoon and he said that he had consulted the United States attorney—he said that in his letter—and that unless

I returned the papers by 9 o'clock Monday morning that he would bring criminal and civil action, and I told him then that I would have the papers there by 9 o'clock Monday morning—he would not let Spaulding write them up—but I would have them there; so I went and got a stenographer and another man to help me in it to make extracts and make copies, and they certified to them that those papers existed and Monday morning at 9 o'clock they were completed, and I delivered the papers that I had to Mr. Christensen at his office.

Mr. VERTREES. Well——

Mr. GLAVIS. One moment until I finish my answer. I might add that when he prepared the receipt for those papers that he omitted making a list of those important documents that he had agreed to include in his receipt.

Mr. BRANDEIS. Who is he?

Mr. GLAVIS. Mr. Christenson.

Mr. VERTREES. Were they added?

Mr. GLAVIS. No, sir; they were not added.

Mr. VERTREES. Well, as I understand you, whatever may have transpired previously, on the 20th or on one day, the 19th of September, Mr. Christenson demanded of you the production and delivery to him of all the papers that you had in your hands as chief; he demanded them as successor, threatening you that if you did not deliver them he would proceed against you both civilly and criminally?

Mr. GLAVIS. Yes, sir; it was Sunday, either the 19th or 20th; but it was a Sunday right near the 19th of September.

Mr. VERTREES. Now, it is not true that on the 19th of September, 1909, Mr. Christenson, the chief of that field division, wrote you a letter in which he said that if the papers are not in this office by 9 a. m. September 20, 1909, the matter will be presented to the United States attorney for proper action with a view to protecting the interests of the Government, both civilly and criminally?

Mr. GLAVIS. That is the letter I referred to.

Mr. VERTREES. You received it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did he hand it to you or send it by mail?

Mr. GLAVIS. He sent it by an agent, as I recall it.

Mr. VERTREES. Did he have a personal interview with you also at the hotel?

Mr. GLAVIS. Yes, sir; after that. He might have handed it to me himself, but it was either him or his agent.

Mr. VERTREES. He might have done it. At any rate, you remember that he had a personal interview after making this demand and the threat to proceed against you both civilly and criminally?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And in response to that did you deliver the papers that you had?

Mr. GLAVIS. I delivered them to him by the time he specified in that letter.

Mr. VERTREES. All of them?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. All the papers that you had?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. All that had been received from the Juneau office that had ever come to you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And all that had been brought down by Mr. Bowman in this satchel that was left at your office, that you know of?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you had no others at that time belonging to the Government and none of that correspondence that was in your office, or that had been brought down?

Mr. GLAVIS. No, sir; a lot of those papers that Bowman had had—no, sir; they were sent afterwards; that is right.

Mr. VERTREES. I will ask you if the next day, September 20, Mr. Christensen did not write you this letter:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Wash.

SIR: In the list of letters received by Special Agent Arthur R. Bowman from the land office at Juneau, Alaska, the following letters are missing:

12-31-06. Wendell McLaughlin.	8-3-07. Thos. Payne.
8-24-07. Archie W. Shields.	9-26-07. Clarence Cunningham.
11-8-07. A. N. Wheatley.	12-11-07. Clarence Cunningham.
12-23-07. W. S. Yearsley.	6-3-08. James D. Finch.
5-9-08. Clarence Cunningham.	3-10-08. Clarence Cunningham.
3-19-08. Clarence Cunningham.	5-23-08. Wm. Sulzer.
4-3-08. Frank Watson.	4-13-08. Clarence Cunningham.
3-14-08. Clarence Cunningham.	3-12-08. H. R. Harriman.
1-7-08. Arthur D. Jones.	1-9-08. Clarence Cunningham (tele-
1-15-08. Clarence Cunningham (tele-	gram).
gram).	1-4-08. A. N. Wheatley.
12-23-08. R. A. Ballinger.	4-19-09. Walter M. French.
4-23-08. M. A. Green.	1-17-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Did you receive then that letter?

Mr. GLAVIS. Yes, sir; I got a letter that sounded like that, calling for some of those papers.

Mr. VERTREES. Are they not the letters which were brought down by Special Agent Arthur Bowman from the Juneau office to that office?

Mr. GLAVIS. They were some of them.

Mr. VERTREES. I do not mean all of them; they were all these letters—part of them. Have you ever seen these letters that are herein referred to?

Mr. GLAVIS. I saw the one of January 15, 1908, I think.

Mr. VERTREES. You have put in a copy of that.

Mr. GLAVIS. I submitted a copy of that to the President.

Mr. VERTREES. Did you ever see the others?

Mr. GLAVIS. I did not see all of those letters. I went through some of them, but did not have time to go over them all.

Mr. VERTREES. The question is, Did you ever see these letters or any of these letters that I have called your attention to?

Mr. GLAVIS. I saw some of them; I do not remember specifically, though, whether I saw all of them. I could identify those that I saw.

Mr. VERTREES. Which of these have you seen?

Mr. GLAVIS. Have you a list there that I can refer to?

The CHAIRMAN. I would suggest to counsel that he call them off in their order.

Mr. VERTREES. I will show him the list that I have.

The CHAIRMAN. Just call them over again.

Mr. VERTREES. That [indicating] is a letter that I read to you dated Seattle, Wash., September 20.

Mr. GLAVIS. I do not remember the first one on the list—12-31-06, Wendell McLaughlin. I do not recall that now. In fact, I could not identify it without knowing the synopsis. I could not identify them by the date and the name merely unless I knew the contents of some of them. I went through those that Bowman brought back from Juneau; I went through them, but went through them hurriedly, and read those that I could. I do not know whether I read them all or not. I can not identify them in that way.

The CHAIRMAN. Is that one of the Juneau letters?

Mr. VERTREES. Yes, sir; those are the letters written—

The CHAIRMAN. I mean the one that you are looking at.

Mr. GLAVIS. No, sir; it is the one dated September 20, 1909, from Andrew Christensen. It is a copy of a letter. As to this statement, "1-15-08 Clarence Cunningham, telegram," I do not remember the telegram, but think that was a letter.

Mr. BRANDEIS. What is the date of that?

Mr. GLAVIS. That is probably a mistake. It is 1-15-08.

Mr. BRANDEIS. January 15?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. There is a letter of January 15 in the record.

Mr. VERTREES. I will ask you whether or not it is true that on September 20 Mr. Christensen called on you to deliver to him as your successor the letters and documents that are listed here in this letter as those which had been received through special agent Arthur Bowman from the land office at Juneau and which had been and were in your possession?

Mr. GLAVIS. They were not in my possession.

Mr. VERTREES. They had been, had they not?

Mr. GLAVIS. They had been, as chief of the field division.

Mr. VERTREES. That is what I am asking.

Mr. GLAVIS. But they were not at that time.

Mr. VERTREES. They were not at that time?

Mr. GLAVIS. No, sir.

Mr. VERTREES. What had become of them?

Mr. GLAVIS. They were there in the chief of the field division's office—all except, as I recall, one letter. I am not sure whether that was in the office of the chief of the field division or whether that was among the letters and documents that I considered important, and that would be the letter of January 15, 1908, to Clarence Cunningham at the Juneau office.

Mr. VERTREES. Is this not true, that in response to this letter you went immediately to Mr. Christensen and told him that you did not have those letters and did not know where they were?

Mr. GLAVIS. I do not recall my telling him that. If I saw him after that I no doubt told him, because I did not have them.

Mr. VERTREES. You did not have them?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And you did not know where they were?

Mr. GLAVIS. They were in his office.

Mr. VERTREES. Do you know where those letters were?

Mr. GLAVIS. They were in his office.

Mr. VERTREES. I am not asking that.

Mr. GLAVIS. I know that they were in the office of the chief of the field division, or were when I was there as chief of the field division.

Mr. VERTREES. Do you mean by "office" under his possession and custody and control with the records?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you say now to the committee that when you made that report to him you knew where they were, or at least where they should be?

Mr. GLAVIS. I know that they were there when I was there. That is where they should be.

Mr. VERTREES. You mean to be understood as saying that you know that they were not in your custody or control, or under your control, or in your possession?

Mr. GLAVIS. If I made that statement to him then, they were not.

Mr. VERTREES. I am not asking that; I am asking now, Mr. Glavis, not what you stated to him, but to state to this committee now whether or not when you responded to that call these letters were or were not in your possession or in your custody or your control.

Mr. GLAVIS. I do not think they were, but as to whether they were among that list of papers that I took out—because I wanted him to list them—I could not tell.

Mr. VERTREES. Did you return those that you took out?

Mr. GLAVIS. Yes, sir; every one of them.

Mr. VERTREES. A while ago you stated that you knew they were in the office of the chief.

Mr. GLAVIS. Well, I think they were; but to be absolutely sure I would rather have it this other way, because I had a lot of papers that I dictated to Spaulding—there was quite a bundle of them—and I am not sure whether or not I am right at this time; I am not sure definitely whether or not they were among those papers, but if, as you say, I told Christensen in reply to that that I did not have them, I did not have them, because I did not make any misstatement to him.

Mr. VERTREES. I have not asked you about that part of it—

Mr. GLAVIS. You asked me about it.

Mr. VERTREES. I did ask you about it, and I am going to ask you again about it, because it is a proper question. Mr. Christensen demanded the specific return of those papers, did he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And what did you tell him when he made that demand with reference to these particular 24 papers named?

Mr. GLAVIS. I do not remember.

Mr. VERTREES. You do not remember that?

Mr. GLAVIS. No, sir, as to these specific papers; but I do remember this conversation with Mr. Christensen, and it was in the presence of P. C. Richardson, in the Lincoln Hotel, in Seattle, with reference to the return of the papers, but he did not specify in that conversation these specific papers, I am sure, because it was a general conversation.

Mr. VERTREES. Now, let us get back to it. You do remember this, that the day before he had demanded all the papers which you had had, and he said to you that if you did not return that by 9 o'clock he would proceed against you both civilly and criminally.

Mr. GLAVIS. If that letter was written—I want to answer that if that letter was written Monday, then I did not have any of the papers,

but I would like to look at a calendar, because my mind is not very clear on the date. I thought that was Sunday. I turned over all the papers I had Monday morning.

Mr. VERTREES. The letter saying that he would proceed against you civilly and criminally is dated September 19, 1909, Mr. Glavis, and it says if the documents are not in his office by 9.30 a. m. September 20, 1909, he would proceed against you both civilly and criminally.

Mr. BRANDEIS. Mr. Chairman, is there any objection to complying with the request of Mr. Glavis that he be permitted to look at the calendar in order to see whether the 26th was Monday or Sunday? I would like to show the witness a calendar [handing the witness a calendar].

Mr. GLAVIS. I can answer all right now. Monday was the 20th.

Mr. VERTREES. Now, then, we understand it. It was on the 19th when he demanded the papers which you had and threatened criminal prosecution if they were not delivered?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In response to that, you did return to him the papers?

Mr. GLAVIS. Yes, sir; on Monday morning.

Mr. VERTREES. By the time stated?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. On the 20th he wrote you another letter, that those twenty-four were missing, and he wanted them?

Mr. GLAVIS. And when he wrote that letter—I do not remember replying to him, but I did not have any of those.

Mr. VERTREES. You did not have them?

Mr. GLAVIS. No, sir.

Mr. VERTREES. They were not in your possession nor under your control?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And you had no idea of where they were?

Mr. GLAVIS. I had an idea where they were.

Mr. VERTREES. Where were they?

Mr. GLAVIS. In his own office.

Mr. VERTREES. But so far as you were concerned, while your idea was that they were in his office, you knew that they were not in yours—you did not have them and they were not under your control or custody or possession?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Now, Mr. Glavis, I show you a copy of Collier's, dated December 4, 1909, which has an article in it, on page 16, entitled "Achilles and his rage.—Mr. Ballinger's replies thus far to the criticisms of him and his department."

In that article it is stated:

On March 14, 1908, or within ten days from the time when Ballinger left the Land Office, we find on the records a letter of Clarence Cunningham to the register and receiver at Juneau, Alaska, which indicates that Judge Ballinger had already become counsel for the Cunninghams. It speaks first of the projected railroad, and then concludes:

"I have no further information relating to our patents, but will have the matter up with Judge Ballinger within a few days and will endeavor to get some information about our titles.

"With kindest regards, I am, yours truly,

"CLARENCE CUNNINGHAM."

Is that not one of these letters?

Mr. GLAVIS. Yes, sir; I think it is.

Mr. VERTREES. I call your attention to another copy of Collier's dated December 18, 1909, on page 8 of which is an article entitled "Can this be whitewashed also?" and among other things in that article I find this:

On January 7, 1909, less than sixty days before Ballinger became Secretary of the Interior, M. A. Green, who represents another Alaska coal syndicate, wrote to John W. Dudley, register of the Juneau, Alaska, land office:

"I submitted this scrip to Judge Ballinger as my lawyer, and he has approved the same saying it was regular in every way, so I bought it and paid for it, and am sending it forward to you at this time."

Mr. GLAVIS. Yes, sir; I am sure that was one of these. I remember that.

Mr. VERTREES. You remember that.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, in the same paper there is the following:

John Ballinger, a nephew of Achilles, now represents these interests. Under date of April 19, 1909—six weeks after Ballinger took the oath of office as Secretary of the Interior—Walter M. French, of the law firm of Allen & French of Seattle, wrote John W. Dudley, register of the Juneau land office:

"Mr. Harriman, whom I represent, has on several occasions taken the matter of sale up with Judge Ballinger, whose firm represented the purchasers, and with Mr. Hartline, and the parties have at all times seemed to be in perfect accord."

Was that not another one—an extract from one?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You recollect that?

Mr. GLAVIS. Yes, sir; I remember that one.

Mr. VERTREES. Don't you know where Collier got those letters?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Did you not furnish them to him?

Mr. GLAVIS. No, sir; I absolutely did not furnish him with those letters.

Mr. VERTREES. Did you not furnish him copies of the whole letters of which these are extracts?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Mr. Glavis, in the post-office building in Seattle, in the grand-jury room, did you not leave some boxes there in which you had effects of your own?

Mr. GLAVIS. Yes, sir; bearskins and camping outfit, and I had a lot of boxes.

Mr. VERTREES. Were they nailed up or locked up?

Mr. GLAVIS. No, sir; they were nailed—some of them were boxed up, I think, and I asked Kennedy—Special Agent Kennedy—I went on to New York without bothering with them—and I asked him to pack them up for me and get them out of there.

Mr. VERTREES. Did you not ask permission to leave them there, though; did you not keep the key of that room for awhile after you left yourself, having them locked up there?

Mr. GLAVIS. Do you mean after I left the service?

Mr. VERTREES. No; before you left Seattle.

Mr. GLAVIS. Before we left the service they let us use that; some of the boys put some of their camping outfit in there.

Mr. VERTREES. You did too; and you carried the key to it, did you not?

Mr. GLAVIS. Yes, sir; I think I had a key, or some of the others had a key.

Mr. VERTREES. But you had a key?

Mr. GLAVIS. I do not know. But that is of minor importance. I do not recall whether I carried the key or left it in the office.

Mr. VERTREES. I am not on the matter of the importance of it; I am on the fact of whether you did or not.

Mr. GLAVIS. I merely meant that it did not stamp itself on my memory.

Mr. VERTREES. You mean that you do not recollect?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What is your best recollection as to whether you had a key and were keeping boxes of things there—

Mr. GLAVIS. I remember keeping the things, and I remember that we got the custodian's permission for it, and some of the other boys kept their things there also.

Mr. VERTREES. When did you see these letters which you say you did see?

Mr. GLAVIS. Those [indicating]?

Mr. VERTREES. Yes, sir; these original letters.

Mr. GLAVIS. I saw these within a week or so after I returned from Beverly. When I first got back my clerk called my attention to this little satchel of papers, and I remember looking through them. There were quite a lot of papers there—nearly a whole satchel full—and I looked through some of those later. I went through them later on.

Mr. VERTREES. So you did see them then?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that was between August 10 and September 18 when you left the service?

Mr. GLAVIS. Oh, yes, sir; it was after I returned from Beverly. It was later than that; it was between August 25, I would say, or 22, to September 19.

Mr. VERTREES. So you did have them in your possession?

Mr. GLAVIS. Oh, yes, sir.

Mr. VERTREES. But you say you returned them. Did you say that?

Mr. GLAVIS. I do not recall ever taking them out of there. I do not think they were among those papers that I did take out the Saturday I left the service and were returned Monday, September 20, but I am not sure as to that. I know they were not all of them. That one I submitted to the President probably because I deemed that of importance in case they should claim that no such letter existed. That is what I wanted that for.

Mr. VERTREES. Now, Mr. Glavis, is this not the truth about that matter, that you did not return those letters—those 24 letters—but you kept them; you concealed them in that box of yours in that grand jury room; that you took copies of them and furnished Collier's copies of them, and that on the 8th of this month the officers out there broke into your box and found the original letters right there?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And I ask you if these are not the letters; if at the very time, January 31, you were not demanding of this committee an order on the Secretary of the Interior to produce those

letters, and if they were not concealed and fastened up in your box; that you had placed them in Seattle in that box in the grand jury room?

Mr. GLAVIS. No, sir; such a statement that I put them there and they afterwards found them is absolutely false. It would be a "frame up," and it is too ridiculous to imagine. They did not hurt me; they hurt Mr. Ballinger. They did not hurt me. I wanted the people to know about them. That is why I called for them. If I wanted to conceal those papers it is too ridiculous to be believed that I would leave them in the federal building in a box where the government officials could get hold of them at any time they wanted. They had access to those boxes. If I had wanted those papers I would have taken them with me; I would not have left them right under the eyes of the government officials. It makes me rather indignant to think that government officials, in the belief that they would further themselves in the eyes of their superiors, would stoop to such a thing, if such a thing were true. [Applause.]

The CHAIRMAN. Order must be preserved in this room. If that demonstration is repeated we will have to clear the room.

Mr. VERTREES. Do you not know, Mr. Glavis, that on February 1 Mr. Christensen reported to the department that he had made diligent search for those papers everywhere and could not find them, and on the 10th they reported that they had searched through this box of yours and had found them there?

Mr. GLAVIS. Do you mean whether I know that he did that?

Mr. VERTREES. Yes.

Mr. GLAVIS. No, sir; this is the first time I have heard of it.

Mr. VERTREES. Can you state how Collier's Weekly during this time got copies of those letters from which they published extracts in order to reflect upon Mr. Ballinger?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You can not explain that?

Mr. GLAVIS. No, sir; not from my personal knowledge. I can give you what I heard.

Mr. VERTREES. Did you not take copies of all those letters, and in those letters that were found in your box were there not two carbon copies of every letter taken by you, and did you not work until 6 o'clock in the morning to do it?

Mr. GLAVIS. No, sir; I made a copy, as I testified in my direct examination, of a lot of papers, and probably some of those, which I sent to the Forestry Service.

Mr. VERTREES. I am asking you about those identical 24 letters that this list called for, and especially on that you reported that you did not have.

Mr. GLAVIS. I did not have them on September 20.

Mr. VERTREES. Are those the letters that we have been talking about [indicating letters]?

Mr. GLAVIS (after examining letters). I do not see that letter of January 15, 1908, here. That was one of the letters called for. That is one that we have already filed a copy of in the record—not the original. May I ask you a question, Mr. Vertrees?

Mr. VERTREES. Yes, sir.

Mr. GLAVIS. Was that letter of January 15, 1908, among the papers—among those letters that was found?

Mr. VERTREES. These are all the letters that were sent to us, and just as they came—excepting the copies of them.

Mr. GLAVIS. Was the one of January 15 there?

Mr. VERTREES. No, sir; I will report to you what he says about it. You delivered that back to them—that letter of the 15th.

Mr. GLAVIS. No, sir; they accused Mr. Bowman of stealing it, and after making an affidavit that he had stolen it, I think Special Agent Stoner found it among the files and told them that he had seen it, and five minutes afterwards they made a search and found that letter.

Mr. VERTREES. They found that letter though in the files?

Mr. GLAVIS. Yes, sir; in the office.

Mr. VERTREES. Those are the letters which were found in your box.

Mr. GLAVIS. You said a while ago that among all the papers that you called on me for was the one he had found in the box.

Mr. VERTREES. I see now what your mind is driving at. The letter of the 15th, which you speak of, and of which you have already given in a copy, was returned, and if I remember correctly that bore marks of having been to the Forestry Office. I would ask in this connection, if the chairman will allow me, to read this—

The CHAIRMAN. It seems to me that he has not answered your last question. You showed him these letters and asked him a question about them, and I am not aware that he has answered your question.

Mr. VERTREES. I have the report made with reference to these letters, and I would like in this connection to read them, because I wish to file them with the letters and will ask a subpoena, of course, for the two men who found them.

The CHAIRMAN. Very well.

Mr. VERTREES. I think it would explain the matter for me to read report on these letters which have been sent in.

Mr. BRANDEIS. Is that a sworn statement?

Mr. VERTREES. No, sir; it is an official statement and signed officially.

The CHAIRMAN. The witness has not answered your last question in reference to this letter.

Mr. VERTREES. Are these the letters referred to in the letter of September 20, calling on you for 24 certain letters?

Mr. GLAVIS. I would like to check them up first before answering that definitely. There is one, as I have stated, that is not among them.

Mr. VERTREES. Here is one lying over here. You laid it back there.

Mr. GLAVIS. No, sir; I did not lay it there.

Mr. VERTREES. It was inadvertently not handed to you. I found it here in the files.

Mr. GLAVIS. That is not the one I referred to. The one I referred to is a letter of January 15, 1908, but to save delay I will say that these, as they look to me, I identify them, or some of them, as being among those that Mr. Bowman had brought back from Juneau.

The CHAIRMAN. That is not the question as I understand it. Were these particular letters in your possession, as I understand the question?

Mr. VERTREES. I think he has already said that these letters were; he said they were after he got back from where he had been between the 26th of August and—

(The question was read by the reporter, as follows:)

Mr. VERTREES. Are these the letters we have been talking about?

Mr. GLAVIS. I will say that these are amongst the letters that we are talking about. Whether they are the letters that came, that were brought down by Special Agent Bowman from Juneau land office, I would not like to state that they are the same as in that list, unless Mr. Vertrees states that he has checked them up and that they are the same, and I will take his word for it.

Mr. VERTREES. Before we get to that, I wish, Mr. Chairman, to present these letters and make them part of the record, together with the accompanying official report of the agent, Mr. Christiansen, the chief of the field service at Seattle, and I desire to read these reports.

The CHAIRMAN. Very well, you may go ahead. You may proceed.

Senator PURCELL. Is Mr. Christiansen here?

Mr. VERTREES. No, sir; but I want to explain how we get them, and why we get them, and why we introduce them.

Mr. JAMES. I hardly think it would be proper to put in the record the report of this agent until it is identified by some official of the Government.

The CHAIRMAN. We have put them in without identification before.

Mr. JAMES. I understood Mr. Pepper, on Saturday, that he wanted to put in some letters from Messrs. Price and Shaw to the President, which he claimed were official documents, and I think it was the conclusion of the committee that they could not be put in until they were identified by some official.

The CHAIRMAN. They were put in for the purpose of getting a continuation, or to ascertain whether Mr. Price and Mr. Shaw were needed here for further examination.

Mr. JAMES. I know, but I thought that the objection that was urged against them at that time was that no one identified them as official documents, and that therefore no document ought to be introduced pretending to be official until identified.

The CHAIRMAN. We have not adopted that rule so far in this proceeding.

Senator FLETCHER. The opinion was that the witness should be on the stand and testify. Now, it is proposed to offer here a paper from an agent out in California making certain statements about certain things that have been told to him as to how these letters were found, and he is not here to testify with regard to it.

Mr. MADISON. Are these papers offered as evidence or merely as a basis of asking questions of the witness?

Mr. VERTREES. Both. I will read this part which is not a statement of any fact with reference to this particular letter. Mr. Christiansen writes under date of February 3, 1910, from Portland, Oreg., transmitting certain copies of things. It is addressed to H. H. Schwartz—

Mr. GRAHAM. I submit, if the chairman please, that this should not become a part of the record of this case. The committee might hear it, but I do not think it ought to go into the record.

The CHAIRMAN. I think under the rule under which we have been heretofore acting with relation to the admission of documents that in respect of the offer on the part of Mr. Glavis we never asked for verification in any of the cases, and we ought not to adopt that rule now.

Mr. GRAHAM. They came direct from the department, and that in itself identifies them; they were evidence furnished by the department, in a sense against the department's interest, and I think——

Mr. OLMSTED. They were simply produced by Mr. Brandeis, not by the department.

Mr. GRAHAM. They were in the custody of the department, but this comes to us already under somewhat a cloud of suspicion. The only evidence we have about it is the statement made by Mr. Glavis on oath a short time ago which tends to throw a cloud of suspicion over it.

The CHAIRMAN. It is a report from government officials, and we have had many reports in the record from government officials that have not been verified as yet. This is exactly in the same position as many other government reports that have been put in. Of course, if the document is admitted in evidence, it must be followed by other evidence, as all documents must be, but we are simply adhering to the same rule and allowing the same latitude as we have heretofore. When the testimony was put in by Mr. Brandeis, we did not ask the verification of any of the documents.

Mr. GRAHAM. I should say that I do not see how we could consider it in reaching a conclusion, as it is now, unless it is to be confirmed in some way later on.

The CHAIRMAN. Of course, that is the question the committee will have to consider in the case, what the value is of any particular evidence. We have let other similar evidence in before in this case, and when we come to consider the case it will be for the committee to say—each member—how much credit they will give to that testimony.

Mr. GRAHAM. I suppose it can be solved by Mr. Vertrees's statement that Christensen will probably be here in person.

The CHAIRMAN. I presume he will follow it up.

Senator FLETCHER. The same objection applies to this as it did the other day. I have no objection to this going in, but the point was made the other day that these letters could not be offered in evidence because the witness was going to be put on the stand, and that same objection applies in this instance.

Mr. JAMES. If the chairman will bear with me, the statement of Mr. Vertrees the other day when this question was up about the admission of the statement prepared by Mr. Pepper for Messrs. Price and Shaw was:

But I do wish to object to the notion that there can be presented to this committee any sworn or unsworn statements. If there be any documents of any character, any official documents, that the committee wants, it is eminently proper, as it seems to us, that the committee should send for them. But, on the other hand, if there be any person who wishes to inject here mere statements of his own it should not be some sort of an ex parte communication, but he should present himself as a witness to be examined and cross-examined here.

Now, it looks to me that if this gentleman who wrote that letter knows these facts he ought to be here to be cross-examined and then let them be put in. I insist that it ought not to be introduced at this time. I do not doubt the good faith of the attorney; I concede it; but it seems to me that if this witness can be brought here he ought to be brought here.

Mr. MADISON. Mr. Chairman, I move that this matter be taken into consideration by the committee to be disposed of, together with the

Price and Shaw letter. The character of the evidence is similar, and the two ought to be determined together.

Mr. DENBY. Before that motion is put, may I ask Mr. Vertrees a question? Does this purport to be a letter from this man to his official superior at the General Land Office or the Interior Department?

Mr. VERTREES. Yes, sir. I was about to explain, but was not permitted to.

Mr. DENBY. Then I suggest that it comes to us by demand of the department, and therefore is an official paper having the same sanction as all the other papers submitted by Mr. Brandeis.

Mr. VERTREES. I would like to make this statement: This committee made a demand upon the Secretary for all papers and documents, and therefore this telegram went to this officer at Seattle, which telegram he sets out here and which I started to read.

Senator ROOT. May I ask what the paper is that you hold in your hand?

Mr. VERTREES. It is the official report of Mr. Christensen as to his search for papers.

Senator ROOT. Is it the original document?

Mr. VERTREES. Yes, sir.

Senator ROOT. From the files of the Interior Department?

Mr. VERTREES. We can not say that they are exactly files as yet, for the reason that these letters just came in yesterday; but Mr. Schwartz, the chief, to whom they were directed, is here in the room, and he brought them to Mr. Ballinger, and Mr. Ballinger in my presence opened them and delivered them to me to be brought here.

Senator ROOT. That is, they came from official custody?

Mr. VERTREES. Absolutely; yes, sir.

Senator ROOT. Directed to whom?

Mr. VERTREES. Addressed to the Hon. H. H. Schwartz, Chief of the Field Service, Washington, D. C. It was in response to his order to make a search for certain papers.

Senator ROOT. And signed by whom?

Mr. VERTREES. Mr. Christensen, Chief of the Field Division.

Mr. MADISON. But that letter is not one that was called for by anyone.

Mr. VERTREES. But it explains why. He sent a whole lot of others.

Senator FLINT. It is a letter submitting all of the letters called for in the subpoena.

Mr. MADISON. Mr. Chairman, I ask that my motion be put. I have a right to have that motion put, I think.

The CHAIRMAN. The question now before the committee is whether this should be read in evidence.

Mr. MADISON. I made a motion, Mr. Chairman, that this matter be postponed and considered together with the other proposition. Will my motion be entertained?

(The chairman put the question.)

Mr. DENBY. What is the motion?

Mr. MADISON. I move that the consideration of the question of the admissibility of this evidence be postponed and determined together with the offer made by Mr. Pepper in behalf of Messrs. Price and Shaw, and that the two be considered together.

Senator ROOT. The proposition has been made that the matter with respect to Price and Shaw be not considered for the present, but that it go over. Now, then, I suppose Mr. Vertrees wants this determined in order to continue his cross-examination.

Mr. MADISON. As a matter of fact, he is not offering them as a part of his examination. He is offering them as original testimony.

Senator ROOT. He says he wants to offer it in order to follow it with some other examination.

Mr. OLMSTED. Let me ask a question of Mr. Vertrees. Are these letters which you have handed to Mr. Glavis a part of the letters which Mr. Brandeis has called upon the department to produce before this committee?

Mr. VERTREES. Yes, sir; and the witness has admitted that.

Mr. OLMSTED. And the letter which you propose to read is that letter with which these letters were transmitted?

Mr. VERTREES. Yes, sir.

Mr. MADISON. You are also offering to introduce at the same time a report of Mr. Christensen.

Mr. VERTREES. That is a letter—the report from Mr. Christensen.

Mr. MADISON. With regard to searching for these letters?

Mr. VERTREES. He has made two.

Mr. MADISON. Let me get this straight. I want to be fair about the matter. If it is proper and fair we want it to go in.

Mr. VERTREES. On February 3 he makes a report in which he sets forth the order on him that has gone forward and stating his attempt to comply with that, and what he could not find, but on February 8 he reports this subsequent action of his searching in these boxes of the witness, and there he did find them, and he transmitted them.

Mr. MADISON. I understand that; and you want to have him brought here?

Mr. VERTREES. I surely do.

Mr. MADISON. For the purpose of testifying as to his search?

Mr. VERTREES. Yes, sir.

Mr. MADISON. And in advance you want to prove the same thing that you want to prove by the witness later on?

Mr. VERTREES. No, sir; as explanatory of why I want to offer these letters—

Mr. MADISON. It resolves itself down to the fact of whether this testimony shall be received here in advance of the testimony of the witness.

The CHAIRMAN. The committee will understand the condition of this case. Mr. Brandeis called for certain documents and letters, among which are these documents and letters involved in this matter. Fault was found because the department was not rapid enough in getting these documents; they searched but could not find them, and they finally found them in a box at Seattle. The department here called on Mr. Christensen out there and he found the documents, and those letters were transmitted. Now, that is the statement of the case as the Chair understands it.

Mr. BRANDEIS. No; as is alleged; not as is proved, but as is alleged.

The CHAIRMAN. I will submit the motion of Mr. Madison to the committee. Will you please state it again?

Mr. JAMES. Just one moment. These letters have been called for by Messrs. Brandeis and Cotton, as attorneys for Mr. Glavis, and if

they come to us in the way of official documents, ought they not to have been delivered to the chairman of this committee instead of Mr. Ballinger, and Mr. Ballinger to his attorney, and then by the attorney to the committee? All the rest of these official communications have been delivered to you, Mr. Chairman, as the chairman of our committee. Now, it appears that these letters have gone a different route altogether; they come to us under different circumstances when they have been demanded by the attorneys on the other side. I insist that this communication at least ought not to be permitted at this time to go into the record.

Senator ROOT. Mr. Chairman, I suggest that this is a matter which should be properly considered in executive session. Mr. Vertrees can go on with his examination on some other line without it.

Mr. BRANDEIS. I would like, now that we have possession of those letters, that they be delivered to the committee, and be retained in the possession of the clerk of the committee.

Mr. VERTREES. I have been doing my best to deliver them to the clerk of the committee.

Mr. BRANDEIS. He had ample time to do it before this, Mr. Chairman, on his own statement. We object to the position taken, which appears to be the position here that no document can go to this committee until it first goes through various hands to Secretary Ballinger, and then have him pass on the question whether the committee shall have it and whether we shall have it.

Mr. MADISON. I do not think that is the attitude of this committee, and it is not right to state that in that way.

Senator ROOT. I do not think that is a proper statement to make.

Mr. BRANDEIS. I beg pardon, if the committee so regards my statement, but I say that is just the position that we are put in here.

Mr. OLMSTED. At your request, we have called on Mr. Ballinger to produce these documents. What is the objection to his producing them?

Mr. BRANDEIS. It has not been done. I understood that this document would be produced and furnished, to this committee as soon as it was possible. I have found fault because they were not produced when we had reason to believe that the same was possible, and I do protest now. It appears right here that these documents, among others, could have been produced, and apparently they are submitted—

Senator SUTHERLAND. Mr. Brandeis, let me understand you. Whether your method of producing these papers is a proper method or an improper method, I do not understand that you mean to say that the committee has had anything to do with it?

Mr. BRANDEIS. I consider that the committee has done its utmost to secure the production of the papers. I have found fault from time to time about papers not being produced, because I understood that the very explicit directions given by the chairman of this committee had not been complied with. Now, we say that here are certain papers which are among those which we have asked for, and all that I said in the first instance was that these papers, now that they have been produced, should be put into the possession of the clerk of the committee, so I might have the opportunity to examine them, as I have under the order issued by the committee. That is all I meant to say, and if I have said anything that transgressed proprieties I did not intend to do so.

Mr. MADISON. My suggestion is practically the same as Senator Root's, and that is that the matter be disposed of, together with the other matter which this morning we postponed, and we ought to postpone this matter because it is of the same character of evidence.

Mr. VERTREES. I would like to say one word—

Mr. McCALL. I understood that the action taken this morning on the other matter was entirely satisfactory to the counsel in the case; is that not true?

Mr. VERTREES. Absolutely.

Mr. McCALL. We followed the suggestion made by counsel. Now here comes up another proposition, it seems to me, and I think we should pass on this proposition, as suggested by Senator Root, in executive session.

The CHAIRMAN. I suggest, Mr. Madison, that you put your proposition in the form of whether he shall read these letters or not.

Mr. VERTREES. May I be allowed one suggestion, and that is as to the production of these papers. It has been stated here that effort was made to have the papers produced and that there was ground of complaint because of the tardiness in producing them. Now the letters were presented—certainly these letters are presented now—and along with them are the official statements of explanation as to why they were not produced before. It seems to me, in view of that complaint and that criticism, that it is eminently proper that the reports that come in from a great distance, the official reports, explaining why they could not be produced earlier and their explanation of why they are enabled to produce them now—that we have a right and should be permitted to present those explanations.

One word further. These papers were not produced before because they only came yesterday, which was Sunday, and it was then that they were opened and it was found out what they were, and they were handed by the Secretary to me, and I brought them here to present them. Of course, he could have done it and delivered that letter, which was his official report which these people have sent, which would have got to the committee the same way, and that is naturally what he would have done.

Mr. GRAHAM. Mr. Chairman, I submit that a report coming in this way, and at this time, does not stand on the same plane as those reports and communications that were made prior to the beginning of this controversy. This report was made, and the events which led to it after the controversy begun, and there is a very clear line of demarcation between statements made and papers written before the commencement of a suit and after it. Now, without impugning anybody's credit or motive or honor, it seems to me that a statement of this sort prepared possibly with a purpose and for an occasion, ought not to be permitted to go into this record as evidence unsupported by anybody's sworn statement.

Senator PURCELL. It is self-serving.

Senator SUTHERLAND. Mr. Chairman, I suggest that Mr. Vertrees had better proceed on some other line, and let us take this matter up in our executive meeting to-morrow morning.

The CHAIRMAN. Mr. Madison, do you insist on your motion?

Mr. MADISON. No; with that understanding. That is the effect of my motion—that this matter go over to be considered just the same as the other. That entirely satisfies me, and I think it is the

proper way to dispose of it—take it up as we do the other matter. I know that they are two different questions, but the effect of the evidence is similar. I am not insisting that it should be at the same time; certainly not.

The CHAIRMAN. Mr. Vertrees will be kind enough to comply with the wishes of the committee, and if possible take up some other line of examination and let this matter go over for the present.

Mr. VERTREES. What I desired to do was to lay this before the committee, so that it could have it under consideration.

The CHAIRMAN. You can file the papers with the clerk of the committee.

Mr. VERTREES. I would like to file them with a statement, if I may be permitted to make a statement. I wish it to go into the record, and the statement is that I here offer certain documents and papers without stating what they are except in a descriptive way.

The CHAIRMAN. You want that to appear in the proceedings?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. I can see no objection to that.

Mr. VERTREES. I now offer a letter with accompanying exhibit of A. Christensen, chief of the field division, dated Seattle, February 1, 1910, addressed to Mr. H. H. Schwartz, chief of the field service, Washington, D. C. I also offer another, with accompanying document, dated February 3, 1910, from the same person, Mr. A. Christensen, chief of the field division, written from Portland, Oreg., and addressed to Hon. H. H. Schwartz, chief of the field service, Washington. I also offer a telegram from him dated February 8, 1910, addressed to Schwartz, General Land Office, in cipher, with the translation, and also a letter of February 8, from Mr. Christensen to Mr. H. H. Schwartz, chief of the field service, being his report, and with that the letters referred to and also two carbon copies of each letter referred to, all of which I desire to state were received on yesterday by Secretary Ballinger, opened on yesterday, being Sunday, and delivered to me, and I now file them with the committee with a view of bringing up the question of having them presented later.

The CHAIRMAN. Let me ask, Mr. Brandeis, have you any objection to Mr. Vertrees's leaving them with the committee, or do you want me to send them back to the Secretary?

Mr. BRANDEIS. I very much desire to leave them with the committee now.

The CHAIRMAN. So you will not require them to be sent back to the Secretary?

Mr. BRANDEIS. The request for papers that I made was that I hoped the committee would get the papers wherever they are, and that it was immaterial from what source they came.

The CHAIRMAN. Very well; they will be considered as filed.

Mr. OLMSTED. You will not insist that both the original and the two carbon copies be printed in the record?

Mr. VERTREES. I am merely submitting what came to me. I will leave them to the committee to deal with them, but certainly I shall not insist on printing all of them.

Mr. BRANDEIS. I suppose they ought to be identified in some way, ought they not?

Senator FLETCHER. They can be identified by descriptions and dates.

Mr. VERTREES. I will add that the letters are all these referred to—the original themselves in the letter of Mr. Christensen, December 20, 1909, addressed to Mr. Glavis, except the letter of January 15 from Mr. Clarence Cunningham.

Does the committee instruct that I shall proceed?

The CHAIRMAN. Yes.

Mr. VERTREES. Mr. Glavis, you said you did not know where the Collier's newspaper got the letters from which they purported to print extracts in December, 1909, I believe?

Mr. GLAVIS. No, sir; I did not.

Mr. VERTREES. Have you any information on that point?

Mr. GLAVIS. I have got my own belief or supposition.

Mr. VERTREES. I do not ask you for that. I ask you if you have any information on the subject?

Mr. GLAVIS. No, sir, I have no definite information.

Mr. VERTREES. You know that they appeared, do you not, before we brought it to your attention here?

Mr. GLAVIS. I have read Collier's article, yes, sir.

Mr. VERTREES. You saw these extracts in those papers did you not?

Mr. GLAVIS. Yes, sir; when they were printed I was out West.

Mr. VERTREES. You saw them, did you not?

Mr. GLAVIS. Yes, sir. I think I have read pretty nearly all of Collier's articles.

Mr. VERTREES. You saw these, and read these, did you not?

Mr. GLAVIS. Yes, sir, I read this one [indicating].

Mr. VERTREES. Did you recognize them when you read them as those mentioned, and as some of those mentioned and described in Christensen's letter of the 20th of September to you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You did?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And yet you do not know where he got them?

Mr. GLAVIS. No, sir; I do not know where he got them.

Mr. VERTREES. Did you make any inquiry of anybody to ascertain?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Did you, Mr. Glavis, give a copy of that letter referred to to anybody else?

Mr. GLAVIS. The letter that Clarence Cunningham wrote about Secretary Ballinger?

The CHAIRMAN. Yes.

Mr. GLAVIS. Yes, sir; I sent a copy of the letter to the Forestry Service.

The CHAIRMAN. To anybody else?

Mr. GLAVIS. No, sir—oh, I sent one to the President, a copy of it to the President, and I think those that are quoted here are copies of letters that I have submitted to the Forestry Service.

Mr. GRAHAM. What was that answer?

Mr. GLAVIS. I think that some of these other letters copied here are copies of letters that I sent to the Forestry Service.

Mr. VERTREES. When you say you think, you mean by that that is your best recollection?

Mr. GLAVIS. Yes, sir; I am not sure that a copy was made of every one of those letters, but I know I made a copy of quite a number.

Mr. VERTREES. At what time did you make them?

Mr. GLAVIS. It was along in September, between the 1st and when I quit the service. Possibly it might have been the latter part of August.

Mr. VERTREES. Was it before or after you were notified that you would leave the service?

Mr. GLAVIS. I think it was before.

Mr. VERTREES. Did you copy everything out there in the Juneau office that you thought would be what you would need or use?

Mr. GLAVIS. In the Seattle office, you mean?

Mr. VERTREES. Yes.

Mr. GLAVIS. I had copies of everything made long before this, with the exception of these particular letters.

Mr. VERTREES. When did you first—

Mr. GLAVIS. I do not know whether the stenographer got all of my answer.

(The stenographer read as follows:)

I had copies of everything made long before this, with the exception of these particular letters.

Mr. GLAVIS. That is correct.

Mr. VERTREES. Now, when did you begin to take copies to furnish to the Forestry Bureau first?

Mr. GLAVIS. The copies that I had, that were made, were not made for that purpose at first.

Mr. VERTREES. When did you begin to furnish them with copies?

Mr. GLAVIS. I sent the Forestry Service—I am not sure, but I think when the district law officer of the Forestry Service came up to Seattle in July, 1909—I think I gave him some copies of reports or affidavits, but I am not sure about that. He can recall it better than I can, but the bulk of the copies of the records that I sent to the Forestry Service was with my letter of September, 1909. I sent them a big bundle of them.

Mr. VERTREES. Is that the first time you began to send them to the Forestry Office?

Mr. GLAVIS. No, sir; I think I gave that district law officer from Portland, Pierce—he is here now—some copies in July, 1909, but I am not sure as to that.

Mr. VERTREES. The point I am getting at is that you had not been in the habit previous to this of sending duplicates to the Forest Office, had you?

Mr. GLAVIS. Oh, I had helped give them copies before. I had never sent them direct before to the Forest Service, but I had let them make copies of reports or affidavits down in Portland; I do not know how many times.

Mr. VERTREES. I am not on the question of what you permitted them to do. I am asking what you did as chief—

Mr. GLAVIS. That is what I did.

Mr. VERTREES. One moment—whether you as chief were reporting to that office as well as to your office?

Mr. GLAVIS. No, sir; it was not reporting, but we were cooperating.

Mr. VERTREES. Were you sending copies of the reports which you made from your office to that office?

Mr. GLAVIS. No, sir; while it was perfectly proper, according to our understanding of March 2 between Secretary Garfield and Secre-

tary Wilson, still it was rather unusual and irregular, but I took that precaution which I believed would aid in preventing the Alaska coal claims from being patented. That was my real reason for doing it.

Mr. VERTREES. I am not asking you as to your reason, but as to the time when.

Mr. GLAVIS. That was along in September when I sent the bulk of them. I never sent any until after I returned from seeing the President, and then I think I sent a few copies, but I do not know which ones they were.

Mr. VERTREES. Now, I think I understand you; that is to say, you did not send any to that office—that is, the Forest Office—until after you went to see the President about these matters?

Mr. GLAVIS. No, sir; you mean the Forest Office in Washington, D. C.?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is correct, is it?

Mr. GLAVIS. Yes, sir. The copy of that report that I made to the President, I let Shaw take. That was about two or three days before I saw the President. I let him take that at Chicago, I think, or sent it to him from New York; I am not sure.

Mr. VERTREES. You understand what I am inquiring about?

Mr. GLAVIS. I understand. I want to be correct.

Mr. VERTREES. I did not ask you what you said to the President. I am asking you about your course.

Mr. BRANDEIS. Sent to the President?

Mr. VERTREES. I did not say "sent." I am not asking you what you reported to the President.

Mr. GLAVIS. And I am not giving it to you either.

Mr. VERTREES. You are giving me a great deal but what I want, and it is a very simple question, and that is whether you were in the habit of sending the duplicates of the original to the Forestry Service—you as chief of the field division?

Mr. GLAVIS. We did not usually do it, but I had done it a number of times before. I sent the Alaska coal cases—

Mr. VERTREES. Was it not exceptional and for some special purpose?

Mr. GLAVIS. Yes, sir; it was for the purpose of further safeguarding Alaska coal lands from going into fraudulent entries.

Mr. VERTREES. When did you send your first copy of the original to the Forestry office for the purpose of safeguarding the Alaska coal lands, and what was the nature of it?

Mr. GLAVIS. I do not remember the first paper I sent, no, sir; I think it was the President's report—that is, to Mr. Shaw; that was the first one.

Mr. VERTREES. That was the first?

Mr. GLAVIS. I think it was.

Mr. VERTREES. And that was when?

Mr. GLAVIS. That was some time in August, about—my report to the President was dated August 10.

Mr. VERTREES. The 11th, I think.

Mr. GLAVIS. Well, it was around August 10.

Mr. VERTREES. So that was the first?

Mr. GLAVIS. As far as I can recollect, unless I gave Mr. Pierce, the law officer of the Forest Service, some of the papers in July, when we examined the Cunningham records up there.

Mr. VERTREES. You have no recollection of having done that?

Mr. GLAVIS. No, sir; I have not. I do not recall doing it, but I am not sure.

Mr. VERTREES. Let us pass to something else. I want to ask you about that Watson Allen case. In your original examination you made the statement that Mr. Ballinger's name was eliminated or suppressed from the record by stipulation, if I remember correctly?

Mr. GLAVIS. I said that that information was given me by Mr. P. C. Sullivan, but I did not have any direct knowledge of it.

Mr. VERTREES. Were you not out there when the case was tried?

Mr. GLAVIS. I was there during the taking of some of the testimony, but not very much of it.

Mr. VERTREES. Were you not present when old man Allen's deposition was taken?

Mr. GLAVIS. Before the referee in the trial of this case?

Mr. VERTREES. Yes; in the case.

Mr. GLAVIS. But not when he went on the stand. I was present when he made his statement before Mr. Hoyt and myself.

Mr. VERTREES. So when you said that was suppressed, when you gave your opinion about that, you knew nothing of it of your own knowledge?

Mr. GLAVIS. That the name was changed in the record?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir; I merely had knowledge, and my direct testimony should show, and I think it does, that Richardson told me.

Mr. VERTREES. In other words, Mr. Richardson told you that and that is all you know about it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did not Mr. Richardson also tell you that it was at Mr. Hoyt's suggestion?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And did not Mr. Hoyt confer with you about it at the time, and was it not on your suggestion and his?

Mr. GLAVIS. I do not remember. I have been thinking about that, but I do not remember.

Mr. VERTREES. That might have been done, might it not?

Mr. GLAVIS. Yes, sir. If Mr. Hoyt recalls its having been done, I was there.

Mr. VERTREES. It is not a question of that. It is a question of what you recall.

Mr. GLAVIS. I do not recall it.

Mr. VERTREES. Do you question that as a correct statement?

Mr. GLAVIS. Why, it would not be unusual; and if Mr. Hoyt states it is so, if he remembers it—

Mr. VERTREES. To refresh your recollection, if I can by question, is not this what happened: That Mr. Ballinger had been made Commissioner of the Land Office when this evidence was being taken and you had been working up the cases and Mr. Hoyt was there attending to it, and that Mr. Hoyt suggested himself, and of his motion, that in view of the fact that it was mentioned here that Mr. Ballinger had been an attorney representing some of these people, and was now a

public officer, that it would serve no good or useful purpose to specify his name; that it would be well enough to substitute the word "attorney."

Mr. GLAVIS. No, sir; I do not remember that.

Mr. VERTREES. And is it not a fact that no such thing was ever done, and that the original record shows in ten or fifteen places that Mr. Ballinger was the counsel?

Mr. GLAVIS. I have not seen that record since it has been in Washington. I understand it has been here about a week, but I have not seen it.

Mr. VERTREES. You do not know what the record shows?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Therefore you did not examine it at all, either the original or that, to see whether your information from Mr. Richardson was correct as to its being cut out?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Do you mean to make the impression that it was done at the instance or suggestion of Commissioner Ballinger or anyone in his interest?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Or that he knew anything about it, or had ever heard of it?

Mr. GLAVIS. No, sir. In testifying about it, I merely wanted, as I thought it had been omitted from the Watson Allen testimony in the record—his name was mentioned in this statement which Mr. Hoyt and I secured—I wanted to call the attention of the committee to it before they secured the record and found this discrepancy existing. That was my object in calling it to their attention.

Mr. VERTREES. But you did not wish to be understood as intimating in any way, as I understood you, that either Mr. Ballinger or anyone for him as his representative, had suggested any such thing?

Mr. GLAVIS. No, sir.

Mr. VERTREES. It came as a suggestion from somebody in the case, you were informed, and that is all you know about it? Is that right?

Mr. GLAVIS. I was informed by Mr. Richardson that the change had been made, and that is practically all that I know about it.

Mr. VERTREES. Did you ever read those depositions in that case?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Do you know what Mr. Allen stated, or the Wilson women in their depositions?

Mr. GLAVIS. I heard one of the Wilson girls testify.

Mr. VERTREES. You have seen fit to mention the fact that Mr. Ballinger had acted as attorney. Do you not know that these are the facts in that matter, that he was not in office, and that Mr. Allen desired to buy two pieces of land that had been patented to those two young women, and that they came to Mr. Ballinger's office for deeds to be drawn and deeds were drawn and checks given for the money, and that they were left in that office in escrow for some reason of their own? Do you not know that to be the fact?

Mr. GLAVIS. No, sir. This is my understanding of the facts: I testified that Mr. Ballinger was not commissioner when he attended to this matter, but that Watson Allen had been interested, or became interested, in the purchase of these coal claims, and that he went to

the commissioner and that the commissioner drew up two deeds of the claims that were patented, or were in the course of being patented, which was perfectly proper.

Senator FLINT. Who do you mean by saying "when he" went to the commissioner?

Mr. GLAVIS. I mean Mr. Ballinger, and he was not holding a public office at that time, and that Watson Allen said he would not become interested, would not purchase the two claims unless he could secure the entire tract, which is about a thousand acres, and then an escrow agreement was also prepared by Mr. Ballinger in which the remaining claims; in which the titles had not been perfected, would be also delivered to Mr. Watson Allen when they had secured their titles. That was my understanding.

Mr. VERTREES. But you had no knowledge of the matter of your own, had you?

Mr. GLAVIS. Oh, yes, sir; I heard Watson Allen make that statement, or a statement in substance the same, before Mr. Hoyt and myself.

Mr. VERTREES. Do you not know that Watson Allen testified in the case that there was no escrow agreement drawn then?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And that the deeds were drawn but that there was no contract drawn, and that the only agreement he had was one that he made some time before with old man Wilson?

Mr. GLAVIS. No, sir; I have not read his statement.

Mr. VERTREES. You do not know, then, what he did say?

Mr. GLAVIS. No, sir; I did not hear him testify, but I did hear him make this statement, which was taken down in shorthand in Mr. Hoyt's office in Seattle.

Mr. VERTREES. Did you read Mr. Clark Wilson's deposition in the case?

Mr. GLAVIS. No, sir; I have not read any of the depositions in that case at all.

Mr. VERTREES. So without seeing that, or knowing what those witnesses stated with reference to what was done with reference to the escrow agreement, you have come here and stated that Mr. Richardson told you that there was one.

Mr. GLAVIS. No; you misunderstood me. I stated here what Watson Allen, the client of Mr. Ballinger, stated was the case, as I recall his testimony.

Mr. VERTREES. And yet you did not see Mr. Watson Allen's deposition?

Mr. GLAVIS. I saw his written statement before he gave his testimony, but I did not see his deposition.

Mr. VERTREES. Just in this connection I will ask you about those statements. Your business was to inquire into what you call coal-land frauds, was it not, Mr. Glavis?

Mr. GLAVIS. That was among the work that I was doing.

Mr. VERTREES. But particularly, you were assigned up there on these Alaska matters. Now, as I understand you, but one person could enter a claim of, say, 160 acres, and when two or more had made locations, if they had any sort of agreement or understanding or combination or in any way combined, that is what you call fraudulent, is it not?

Mr. GLAVIS. Which do you refer to, the Alaska law or the—

Mr. VERTREES. The Alaska law.

Mr. GLAVIS. Why, that was the situation in the Alaska coal cases in Alaska that we were investigating. They were all independent. There was not any association at all among them.

Mr. VERTREES. I am not asking you as to the facts yet; I am on the principle. I am speaking of your investigation of these fraudulent claims which you have denominated fraudulent. Now, there are these claims which were the result of combination, and they were regarded by you as fraudulent, were they not?

Mr. GLAVIS. Yes, sir; where there were more people trying to secure coal land than were allowed under the law.

Mr. VERTREES. Then you speak of dummy entries. Just describe them.

Mr. GLAVIS. The word "dummy" never originated with me, because it is very indefinite. What do you mean by dummy entry?

Mr. VERTREES. I am asking you. I see all through the record a reference to dummy entries, and you know what the people mean by a dummy entry. You have used the expression.

Mr. GLAVIS. Yes, sir; I have used it, but I do not want to answer to dummy entries; your idea of a dummy entry and mine may be entirely different.

Mr. VERTREES. What did you mean by "dummy" when you were talking about dummy in your deposition?

Mr. GLAVIS. I have not mentioned dummy, I do not think, except as to what other people term dummy entries, and have given their construction of it.

Mr. VERTREES. What did you understand them to mean when they were talking of dummy entries?

Mr. GLAVIS. I think they call a dummy entry an entry where a man or a woman had given somebody a right to file on coal in Alaska, or anywhere else for that matter, and agreeing to give them the title, when they secured it from the Government, for five or ten dollars or fifty dollars, something like that.

Mr. VERTREES. In other words, they would use somebody else's name—get somebody else to do it when they were really the people who owned it.

Mr. GLAVIS. No, sir; they had a certain interest in them, if they were going to receive a certain sum afterwards; but the question was, as to the sum of money they were to receive, whether it would restrict them to the name "dummies" or not. That is, if 30 or 40 men—wealthy men—were going in to consolidate their claims and each one share and share alike in the mining of coal and a general working combination of that kind—just a big company—

Mr. VERTREES. That is not what I am talking about.

Mr. GLAVIS. But I am illustrating the similarity.

Mr. VERTREES. That is not what I am asking.

Mr. GLAVIS. But I am illustrating the similarity between the two. In my opinion they have violated the law as much as the man—

Mr. VERTREES. I would be very glad if you would answer my question. I did not ask for any discourse on the subject. I am after definitions now.

Mr. GLAVIS. I would like a definition of the word "dummy," as to your definition of it.

Mr. VERTREES. Mr. Glavis, the word is frequently used and commonly used by you Land Office people, is it not?

Mr. GLAVIS. Well, some of them use it; a lot of Land Office people use it, but I do not think it is—

Mr. MADISON. I think, Mr. Glavis, that that word has a common meaning and acceptation, and you can give it to Mr. Vertrees. If it has more than one meaning, give them all.

Mr. GLAVIS. What we consider—that is, what in the Alaska coal cases they call dummies—some people call them dummies where claims are taken up by people who, after they have secured title, are to receive from \$5 to \$100.

Mr. MADISON. A merely nominal sum?

Mr. GLAVIS. A nominal sum. They call them dummies.

Mr. VERTREES. The essential idea, Mr. Glavis, as I understand you, is that the men who really expected to own this property and pay for it would procure somebody else to locate for them and presumably as their own, when in reality it was the men behind with the money. Is that the idea?

Mr. GLAVIS. That is sometimes the case. And then again there will be a man, a speculator, who will have a whole lot of coal filings made for his benefit, for which he will pay from \$5 to \$100, and then afterwards sell them to other people; locate other people on them.

Mr. VERTREES. But the essential idea is that when a man, ostensibly who is an entrant or claimant, is not really so, that is what you call a dummy, whether there is one man or twenty behind it? That is what I want to get at.

Mr. GLAVIS. Yes, sir; that is practically so.

Mr. VERTREES. That is what is commonly understood as a dummy, and those are forbidden by that law. You were around looking up those cases to see if there were any such.

Mr. GLAVIS. When?

Mr. VERTREES. Oh, in the Alaska coal land cases. Consider my inquiries as to them until we get to something else.

Mr. GLAVIS. I was investigating Alaska coal claims, and sometimes we would find conditions to amount to that.

Mr. VERTREES. You seem to misunderstand me. I have passed over that. We are to another class of offenses against the land laws, which I understand from your evidence you have denominated as fraudulent, and that is those that are combinations of individuals where it was not a dummy; where A, for example, in good faith would make a claim, enter a claim for a piece of land, and B and C and D and a number of others do the same, with the understanding or agreement that they would combine them eventually into one, either through the form of a company or by some other association—is that right?

Mr. GLAVIS. They could not have made the locations in good faith if they had that understanding.

Mr. VERTREES. That is not my question, Mr. Glavis.

Mr. GLAVIS. The way you put the question it would be proper in one light and improper in another. If they had made it in good faith—

Mr. VERTREES. You still do not understand me. Of course if it was—I am on this point, if that was the character of the offense?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That you stated you were finding chiefly in that country, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And when you have explained about frauds on the Government and frauds on the land laws and fraudulent claims in the main, is not that the kind of claim that you have been talking about?

Mr. GLAVIS. In the Alaska coal claims?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes; the majority of them are under those conditions.

Mr. VERTREES. That is to say, the money would be paid, or it was expected it would be paid; there was no defrauding the Government so far as getting the land or anything like that further than this, that these people, as you understood it and apprehended, were pooling their issues and meant, when they got the lands, to get a larger body of land together than the law allowed, and in that way combine and associate themselves, when they were not authorized to do so.

Mr. GLAVIS. The Supreme Court of the United States has held that that was quite a fraud. It was clear——

Mr. VERTREES. Mr. Glavis——

Mr. GLAVIS. I want to answer the question.

Mr. VERTREES. I am not saying whether it is a fraud or not. I am saying that that was the kind of fraud you were principally working on for some years, and of which you say most of these claims were; is that right?

Mr. GLAVIS. I would like that question read.

(The stenographer read the question, as follows:)

That is to say the money would be paid, or it was expected it would be paid; there was no defrauding the Government so far as getting the land or anything like that further than this, that these people, as you understood it and apprehended, were pooling their issues and meant, when they got the lands, to get a larger body of land together than the law allowed, and in that way combine and associate themselves, when they were not authorized to do so.

Mr. GLAVIS. Well, that is outlined in a way—the character of the case—but it is improperly stated, because it was a violation of the law, and in your statement you said it was not.

Mr. VERTREES. I did not mean to assume it was not. Let me make myself plain. I am on the character of frauds which you were investigating. I have understood you to say that they were principally of this class that we have been talking about, whether I have accurately defined them or not.

Mr. GLAVIS. Yes, it was a class of a number of people, some of them were very wealthy people, who would, through their agents, locate a large number of coal claims in Alaska with the understanding that they would—some with the understanding that they would—form a company when they secured title and operate the claims, and others of them would have an operative agreement some way.

Mr. VERTREES. But on the face of things each was individual, was it not?

Mr. GLAVIS. No. Such a condition as Judge Hanford stated gave an interest to each person having that understanding in each of the claims.

Mr. VERTREES. Mr. Glavis, I will ask you to put your mind on my question. I am not asking you as to the law of the matter, but as to the character of the claims.

Mr. GLAVIS. Well, that is what I meant.

Mr. VERTREES. If you will listen to me. The claims on the face of things would be apparently the claim of the individuals, would it not?

Mr. GLAVIS. Oh, so far as the records disclose, yes, sir.

Mr. VERTREES. That is what I meant by "the face of things."

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. On the face of things an individual would have taken up 160 acres; but the thing which, if it existed, you say was a fraud, was that one or more out of the number had really agreed to combine, either in the form of a company or some other association and put their claims together?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And these were the frauds you were working up for the most part?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now what I want to get at is the way you did that. Did you not understand that that was not only fraudulent, but criminal, I believe you said?

Mr. GLAVIS. Yes, sir; they could make a charge of criminality on it.

Mr. VERTREES. As agent for the Government, you would go to each one of these claimants to get him to make a statement that would not only forfeit his land but subject him to some sort of prosecution—is not that the way you gathered up this proof that you call affidavits?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. How many of those affidavits did you take of that character in regard to these Alaska coal cases while you were up there, you and your associates and assistants?

Mr. GLAVIS. During all my investigations?

Mr. VERTREES. Beginning in 1908, in reference to the Alaska coal investigation.

Mr. GLAVIS. In the spring of 1908—you want the total number?

Mr. VERTREES. Yes, sir.

Mr. GLAVIS. Oh, I would say about 400; three or four hundred.

Mr. VERTREES. Individually, you took them individually?

Mr. GLAVIS. Oh, no; I am not including all of them—

Mr. VERTREES. Now, then, I understand you. What I want to get at is the way you did, you and your associates. You would go to these men for the purpose of getting them to make statements showing in reality that they had not entered this land as individuals or located it as individuals, but in combination?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you approached them for that purpose?

Mr. GLAVIS. No, sir. We first tried to ascertain the facts; we did not judge a person before we had facts to warrant it.

Mr. VERTREES. Was it not a question of getting the facts through the affidavits of these individuals?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Affidavits which meant that they would lose their title and subject themselves to criminal prosecution if they told the truth about it, as you understood the truth to be?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you explain to any of them the effect of these statements?

Mr. GLAVIS. No; we would never have gotten very many affidavits if we did.

Mr. VERTREES. What did you say to them that you wanted them to do?

Mr. GLAVIS. I told them I wanted to get the facts.

Mr. VERTREES. You wanted to help them get the land?

Mr. GLAVIS. No, sir; I didn't tell them that.

Mr. VERTREES. Or aid them in getting it?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Did you not say before dinner that that was part of you business—to aid people in getting land?

Mr. GLAVIS. Yes, sir; I have aided a lot of people.

Mr. VERTREES. And of all those Alaska coal claims did you report more than 21 that were good, according to your view, that were not fraudulent?

Mr. GLAVIS. Yes; we had not completed the investigation on all of them.

Mr. VERTREES. I am not on the question whether you completed the investigation on all of them.

Mr. GLAVIS. I think it was about that many; I do not know; I think it was about 21.

Mr. VERTREES. How many had you rejected?

Mr. GLAVIS. The remainder of them, whatever number that was; I do not remember the number. It is something like—oh, I should say seven or eight hundred; I do not know now.

Mr. VERTREES. Those frauds were of the character you have described, where people had combined and associated together?

Mr. GLAVIS. Oh, no; some of those were where they were only to receive about a third interest, and some of them were where they were to receive only about two or three hundred dollars if they got their title.

Mr. VERTREES. Well, I believe now I understand what you mean by that. Now, there is another thing I want to ask you about just in this connection. You stated, did you not, that when this investigation began that you had never known—I mean the trial of this Alaska case, the Cunningham case—that you had never heard before of the register and receiver being passed over and the matter being taken directly to the commissioner; that you had always understood those controversies were started with the register and receiver, and that was not done in this case, and you had never heard of such a case before?

Mr. GLAVIS. No, I never heard of any practice where the evidence did not go to the register and receiver first.

Mr. VERTREES. Did you not know why that was done in this case?

Mr. GLAVIS. No, sir; I have never had it explained to me.

Mr. VERTREES. Did you not know that Mr. Mullin—that his son was one of the claimants in the Cunningham group?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Mullin was what officer?

Mr. GLAVIS. He was receiver of the United States land office.

Mr. VERTREES. Did you not know that Mr. Dudley was the register?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you not know that Mr. Dudley had aided while he was an official—that he had prepared the papers for the Cunningham people, and had been paid by them \$250 for it?

Mr. GLAVIS. Yes; and he had been paid by other people too; but that does not alone—there is nothing that shows why they did not go before the land office, because they have had registers and receivers disqualified, sometimes both have been disqualified, and they would appoint special agents to sit in their places.

Mr. VERTREES. They would appoint special agents, but in this case you did not know the reasons why they were not referred to these two persons.

Mr. GLAVIS. No, sir; and the information I had received—I think it was a letter from the General Land Office in June or July, 1909, in which it was stated that the object of having them go before the land office in Juneau was to save time and expense.

Mr. VERTREES. I understand that. But was not the other condition, the absolute existing condition, that Mr. Mullin's son was one of the claimants the reason?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that the other man had been paid \$250, as the book accounts show, which you had—those were the facts, were they not?

Mr. GLAVIS. Yes; as to those two men.

Mr. VERTREES. And they were the register and receiver?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You were told the reason they went there was to save time and expense?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But you concede that the other was the real existing state of facts, that they were the facts?

Mr. GLAVIS. Oh, yes; they are facts.

Mr. VERTREES. Now, Mr. Glavis, you have stated that one of the things that you regard as very bad was this opinion of Mr. Pierce, and you have stated that the Attorney-General overruled Mr. Pierce's opinion. You understand it that way, I suppose?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Does the Attorney-General understand it that way?

Mr. GLAVIS. I do not know what the Attorney-General intends to interpret it there.

Mr. VERTREES. I wish you would turn to the statement which you all prepared to submit to the Attorney-General. Mr. Cotton, what page is it?

Senator FLETCHER. Page 16, of Senate Document 248.

Mr. VERTREES. Now, Mr. Glavis, you have stated that this was one of the important things, as you regarded it, in this matter, and that it was prepared, as I understand it, by you and Mr. Schwartz?

Mr. GLAVIS. Yes; as I recollect it, he dictated the letter and I read it, and it included down to paragraph 3; that is the statement No. 3, and then stopped. The next morning I read it over and added No. 4. That is about the only change there.

Mr. VERTREES. Now, I will ask you if the very statement which you and Mr. Schwartz prepared does not say that, "at the date of the passage of this act"—that is, the one which you wanted construed;

the act of May 28, 1908—"there were pending in the various land offices in Alaska unprotected coal entries in which payment had not been made and cash certificate had not issued." Now, I will ask you if that did not exclude the Cunningham entries, about which so much has been said?

Mr. GLAVIS. That preliminary statement—

Mr. VERTREES. In other words, what I want to know is this—

Mr. GLAVIS. But the statement did not.

Mr. VERTREES. Wait a moment—if the Cunningham entries were not entries in which payments had been made and cash certificates issued?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Every one of the 33?

Mr. GLAVIS. And that is covered by question No. 4, which I think—

Mr. VERTREES. We will get down to No. 4. Let us not go so rapidly. And you speak of them there—"these entries were made by persons qualified to make entry under the general coal-land laws." What I wish to emphasize and get your mind on and have you state to the committee is, if the Cunningham group, all 33 of them, were those in which the entries were perfected and for which payment had been made and cash certificates had issued?

Mr. GLAVIS. Yes; such is the case.

Mr. VERTREES. Such was the case at that time?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, you formulated the four questions relating to the character of cases that your letter contemplates, and is it not true, Mr. Glavis, that it excludes entries of the character of the Cunningham group?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Does it not exclude them?

Mr. GLAVIS. Excludes them?

Mr. VERTREES. Yes; because they were completed entries.

Mr. GLAVIS. They were completed. This question would not exclude them—"entries made under an agreement to convey." No; that is not it.

Mr. VERTREES. Let me call your attention to another clause, Mr. Glavis. In the second paragraph is it not stated that "application is now being made from time to time that certain of the entries above referred to and pending on May 28, 1908, be now accepted?"

Mr. OLMSTED. March 28, is it not?

The CHAIRMAN. It is May in the book here.

Mr. VERTREES. March it should be. "Be now accepted, cash price received, and entries permitted to go to patent under the terms of this act." These are entries above referred to; that is to say, those in which the payment had not been made and the cash certificate had not been issued; and does it not expressly state that the applications that are to be considered are those of that character; that is, the entries above referred to and pending at the date, March 28, 1908, and that the proposition is to know now whether those of that class shall be now accepted and the cash price received and the entries permitted to go to patent?

Mr. GLAVIS. Yes, sir; that first part does.

Mr. VERTREES. And all that I have read, does it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Is not that the substance of the subject-matter which was presented to Mr. Pierce—that is, to take his opinion on that—and these four questions which you propounded may have related to that state of facts?

Mr. GLAVIS. I do not know what was in the mind of Mr. Schwartz when he dictated that letter, but when I dictated it or read it over I had in my mind all the Cunningham cases, and to be doubly sure I inserted the last question, No. 4, thinking that that would decide each question that was in my mind. I paid no attention to the substance.

Mr. VERTREES. I am not asking you what was in your mind now. You have taken issue with the other law officers and assumed to state your opinion of the law of the case upon the case put. We are dealing with that, and the question is not what you say you understood, but what it fairly and properly should be understood to mean; and I am now putting to you if the case that was there prepared, and prepared by you and Mr. Schwartz as officers of the department—if it does not state just the character of case, or rather the class of cases, that I have described, and absolutely exclude entrymen, and specifically the Cunningham cases, or cases of the class of the Cunningham cases?

Mr. GRAHAM. For the convenience of the committee I would suggest that you read that fourth point into the record here.

Mr. VERTREES. Yes; I was going to get to that, but I will read it at your suggestion.

Mr. GRAHAM. In studying the evidence it would be convenient to the committee.

Mr. VERTREES. I was not going to leave the question. I was going to fairly exhaust it before I got through.

Now, Mr. Glavis, I will ask you if in your publication in Collier's with reference to this matter you did not say: "Ten days later the Attorney-General delivered an opinion on the question. It is long, and I shall not quote it. Suffice it to say it overruled the Pierce decision on every point, upheld my contention, and saved the Alaska coal cases?"

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, you made that statement, and I will ask you if that has not been your position and contention all through?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That the opinion of the Attorney-General overruled the opinion of Mr. Pierce on every point.

Mr. GLAVIS. Yes, sir; and that is—

Mr. VERTREES. Wait a minute. And that the effect of overruling that was to save the Alaska coal cases; and did you mean—or rather, answer that; wasn't that your position, and has it not been throughout?

Mr. GLAVIS. Yes; and it was the position of other attorneys.

Mr. VERTREES. Never mind that; I am not arguing with you. I am merely trying to find out what your position was.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, we will get along much more rapidly if you will just confine yourself to that. When you say, "Saved the Alaska coal cases," did you not mean the Cunningham group?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You meant all of them?

Mr. GLAVIS. I meant all the Alaska coal cases.

Mr. VERTREES. Now, I will come back again to the letter on page 16, in view of that, and will ask you if the very proposition which you and Mr. Schwartz presented to Mr. Pierce for his opinion does not exclude all cases of the class to which the Cunningham group belongs, because and for the reason that they were cases, the Cunningham group of cases, in which payment had been made and cash certificates had issued—is not that true?

Mr. GLAVIS. No, sir.

Mr. VERTREES. If not, why not?

Mr. GLAVIS. I think that the Cunningham cases are covered by that paragraph 4, and it has always been in my mind—pardon me for saying what I had in mind—but I believe that a person passing on this letter would pass on the question submitted and not upon the entire letter.

Mr. GRAHAM. It is only three or four lines long, and I would suggest you read it, so that it will go into the record.

Mr. GLAVIS (reading):

A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

Mr. VERTREES. Well, now, if you will just pass from that for a moment; I am not going to leave it; I will return to it later. I will ask you if the Attorney-General did not say on page 804 of Senate document 248, with reference to Mr. Pierce's opinion, at the top of the page, this: "That the letter submitting the question to the Attorney-General"—

The CHAIRMAN. What page are you reading from?

Mr. VERTREES. Page 804, and I read from the statement of Mr. Attorney-General Wickersham, to the President, as follows, quoting from him, at the top of the page, the third line: "That the letter submitting the question to the Attorney-General, the form of which was prepared by Mr. Schwartz in conference with Glavis and was in part suggested by him, by its very terms excluded any possible reference to the Cunningham claims."

Now, so far from the Attorney-General overruling the question or Mr. Pierce's ruling with reference to the Cunningham claims, isn't it a fact that the Attorney-General there himself admits and states that neither his opinion nor Mr. Pierce's opinion relate to the Cunningham claims, because the form or question which you stated to him absolutely excluded all possible reference to the Cunningham claims—doesn't it state that?

Mr. GLAVIS. Yes, it does; and I would like to further explain that. I am very much surprised that he would make that statement, that this decision had nothing to do with the Cunningham claims, for the reason that when the matter was submitted to the Attorney-General he had submitted to him a copy of my report of March, 1909, on the Cunningham claims as well as a copy of Mr. Schwartz's memorandum arguing what he believed the proper construction to be; and he had my report on the Cunningham claims I submitted to him for his information in reaching a proper construction of the law. That is, I had quoted a few Supreme Court decisions that I thought sustained him, and I wanted him to look at them if he would.

Mr. VERTREES. If I understand you, you have added this statement, that when the Attorney-General passed upon the question which was submitted to him by you and Mr. Schwartz conjointly, in that joint statement to take his opinion, that he not only had that before him when his opinion was asked, but he had your brief also on the subject.

Mr. GLAVIS. He had Mr. Schwartz's views.

Mr. VERTREES. And had that as an explanatory statement?

Mr. GLAVIS. Yes, sir; and he had a copy of Mr. Pierce's decision also, and furthermore another statement. The report calls it to my mind.

Mr. VERTREES. Let me interrupt you?

Mr. BRANDEIS. Let him finish that.

Mr. VERTREES. I will have to insist upon a ruling. I am not asking him about other papers at the present time; I will get to all that later. I am asking him on the point that he individually and personally submitted a brief of Supreme Court authorities and a statement, and that was before the Attorney-General also. We will get to the other people's actions presently.

The CHAIRMAN. I think he ought to answer the question, but if his answer requires an explanation he may make it.

Mr. VERTREES. After he has answered it, he can explain it.

Mr. BRANDEIS. May he read the question and the answer as far as he has gone?

Mr. VERTREES. I will repeat the question. What I want to know, Mr. Glavis, is whether or not this is true, and, if you will allow me to say, just answer my question, and then if there is any explanation of that question which you want to make afterwards make it subsequently, or if there is any explanation of your answer. I want to know if this is not true that at the time Mr. Attorney-General Wickersham had before him the case, or rather the statement, which was prepared by you and Mr. Schwartz, under date of May, —, 1909, to take his opinion with reference to the proper and true construction of the act of May 28, 1908, because you were displeased with Mr. Pierce's construction, if he did not then have at the same time when he considered it not only the case which he was to consider, but your brief or statement at the time also before him?

Mr. GLAVIS. No, sir. Now, I want to explain my answer. He didn't have a brief by me, but he had a memorandum which was prepared by Mr. Schwartz protesting against, or giving his views—and I considered it in the nature of a protest in our conversations heretofore—giving his views as to the proper construction which should be placed upon the act of May 28, 1908; Attorney-General Wickersham had that. He had a copy of my report of—I will have to find that—he had a copy of my report of May 26, 1908.

Mr. VERTREES. What page is that on?

Mr. GLAVIS. That is on page 40 of the Senate document.

Mr. BRANDEIS. May 26 or March 26?

Mr. GLAVIS. May 26. He had a copy of that report; he had a copy of the letter which we prepared for Secretary Ballinger's signature to go to the Attorney-General, and Assistant Secretary Pierce's decision of May 19 on this letter which Mr. Schwartz and I had prepared. In this letter also I stated, this report rather, "That the

Cunningham group may be taken as characteristic," and my report thereon sets forth fully the facts in connection therewith. A set of facts covering the Cunningham case have been contained in a letter herein above quoted submitted to the department. This opinion renders futile any further investigation of them and the similar groups herein above mentioned. He had that; you also had a copy of my report of March, 1909, in which I quoted the decision of the Trinidad Coal and Coke Company case, the decision in *United States v. Keitel*, in the Supreme Court, and also the Portland Coal and Coke Company case. That report was relative to the Cunningham case also.

Mr. VERTREES. Now, then, if I understand, all these papers, the old as well as the new things, were before the Attorney-General when he considered the case put to him for his opinion? Is that right?

Mr. GLAVIS. That was submitted to him.

Mr. VERTREES. Well, is that right?

Mr. GLAVIS. I do not know whether he considered them when he considered the opinion or not.

Mr. VERTREES. I thought you said he did awhile ago.

Mr. GLAVIS. No, sir. I stated that he had these brought to his attention, and concluded from the statement of the facts by Mr. Hoyt and these papers that the Pierce decision should be submitted to him for an opinion.

Mr. VERTREES. Well, pass back for a moment. Does not the Attorney-General also say, there on page 804, "that with the explanation of the somewhat ambiguous phrase, 'initiation of the entries,' used by Assistant Secretary Pierce, his construction of the statute did not differ from that given to it by the Attorney-General in his opinion?"

Mr. GLAVIS. Yes; that is what he said.

Mr. VERTREES. That is what the Attorney-General says about it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, he speaks there of the phrase "initiation of the entry."

The CHAIRMAN. Mr. Vertrees, if it is agreeable to you to stop now, we will adjourn until to-morrow morning. It is about time.

(Thereupon, at 5 o'clock, the committee went into executive session, and thereafter adjourned until Tuesday morning, February 15, 1910, at 10 o'clock.)

TUESDAY, FEBRUARY 15, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR
DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., February 15, 1910.

The Joint Committee to Investigate the Interior Department met pursuant to adjournment at 10 a. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Fletcher, and Purcell; Representatives McCall, Olmsted, Denby, Madison, James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford

Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will please come to order; a quorum is present. Mr. Glavis will please take the stand and the cross-examination will proceed.

Mr. VERTREES. Mr. Chairman, we wish to ask the committee to call upon the Forest Service to produce immediately all copies of all letters and papers relating to the Alaska coal claims furnished to them by Mr. Glavis.

The CHAIRMAN. Please repeat that question.

Mr. VERTREES. We wish to have the Forest Service furnish copies of all letters and papers relating to the Alaska coal claims that were furnished to it by Mr. Glavis.

The CHAIRMAN. Very well. You mean the Bureau of Forestry or the Department of Agriculture?

Mr. VERTREES. Yes, sir; it is usually called the Forestry Service, as I am informed.

The CHAIRMAN. Very well; that will be attended to.

Mr. BRANDEIS. Mr. Chairman, I would like to renew my daily complaint in reference to the papers not produced which have been called for. I suggest that the committee address a special communication calling for the production of the papers not yet delivered. I have reason to believe—

The CHAIRMAN. Will you give a list to the clerk of the committee of the papers that have not come?

Mr. BRANDEIS. Yes, sir; I have reason to believe that some of them have been available, and perhaps all of them.

The CHAIRMAN. Will you make a list of the papers that have not come so that I can write to the Secretary and call for these papers specifically?

Mr. BRANDEIS. Certainly.

Mr. VERTREES. I will ask for the issuance of a subpoena for A. C. Christensen, Chief of the Field Division, and G. W. O'Neil, official custodian of the federal building at Seattle, directing them to appear as witnesses to testify and to bring with them to this place the box of Mr. Glavis, in which the papers referred to on yesterday and mentioned at pages 455 to 469 of the printed record are found.

The CHAIRMAN. Very well; that course will be taken. Will you please leave the request with the clerk?

Mr. VERTREES. Mr. Chairman, on yesterday reference was made during the cross-examination of the witness to a summary by the Attorney-General of the United States, under date of September 11, 1909, which is to be found at page 731 of Senate Document 248. I would like that to be made a part of the record.

Mr. DENBY. Mr. Chairman, may I suggest at this point that if there is anyone prepared to offer necessary corrections to the record it be done to-day, and thereafter daily, so that we will not have an accumulation like yesterday to dispose of at one time? If Mr. Glavis has read the record and wishes to make corrections, he may do so.

Mr. GLAVIS. I have not seen it yet.

Mr. DENBY. It is out. I did not know whether it was put in his hands or not.

The CHAIRMAN. Mr. Vertrees, what was your request?

Mr. VERTREES. That opinion entitled "Summary by the Attorney-General" be made a part of the record.

The CHAIRMAN. Very well; if there is no objection, that will be done.

Mr. VERTREES. I would like to know whether or not this entire book, Senate Document 248, has been made a part of the record?

Mr. GRAHAM. A good deal of it has, but not as a book.

Senator FLETCHER. I move that the whole book be made a part of the record.

Mr. OLMSTED. I second that, Mr. Chairman. We have to refer to it every five minutes, and it had better be considered as in evidence.

Mr. McCALL. That is, not as definitive proof of anything, but for the purpose of reference and whatever it may be worth in the judgment of the committee.

The CHAIRMAN. You have heard the motion. Is there any objection? If there is no objection, that will be considered as the order of the committee.

Senator SUTHERLAND. But at present this is to be taken as a whole?

The CHAIRMAN. Yes. You do not mean by this motion, Senator, to have it printed with our daily proceedings—the whole book?

Senator FLETCHER. Oh, no.

The CHAIRMAN. So that this summary of the Attorney-General goes into to-day's record only.

(The document is as follows:)

SUMMARY BY THE ATTORNEY-GENERAL.

SEPTEMBER 11, 1909.

On August 18, 1909, L. R. Glavis, chief of field division of the General Land Office, with headquarters at Seattle, Wash., called upon you and submitted a statement or report, dated August 11, 1909 (prefaced by a summary of its contents), relating to the conduct of the Interior Department, and particularly to the action of Hon. Richard A. Ballinger, Secretary of the Interior, Assistant Secretary Pierce, Commissioner of the General Land Office Dennett, and Chief of Field Service Schwartz, in reference to the so-called "Cunningham" group of coal land claims in Alaska.

You transmitted a copy of these documents to the Secretary of the Interior, asking his comments upon the same, and you also forwarded copies to each of the other officials named, asking him to send you a written statement as to whether the facts, so far as he knew them, were different in any regard from Mr. Glavis's statements; and also making such replies as he might wish to the inferences which would seem to have been desired to be drawn in respect to his attitude toward the coal claims referred to, and, incidentally, to the Forestry Bureau.

The following statements and documents have been submitted to you in reply:

1. Statement by Secretary Ballinger, dated September 4, 1909, with exhibits, hereinafter referred to by the initial B.
2. Statement by Assistant Secretary Pierce, with exhibits attached, dated September 1, 1909, hereinafter referred to by the letter P.
3. Statement by Commissioner of the General Land Office, Fred Dennett, dated September 4, 1909, and exhibits, hereinafter referred to by the letter D.
4. Statement by H. H. Schwartz, chief of the field service, U. S. General Land Office, dated September 1, 1909, and, separately, a volume of exhibits, hereinafter referred to by the letter S.
5. A complete record of the files of the General Land Office, relating to the so-called Cunningham claims, prepared by Mr. Schwartz, hereinafter referred to as "S. Rec."
6. Three volumes of files from the General Land Office, relating to Alaska coal lands, marked "24 File No. 2, part 1, part 2, and part 3," respectively. Papers in these files, when used in this statement, are referred to by specific description, or as "G. L. O. Rec."

7. Mr. Glavis also submitted to you a letter, dated September 3, 1909, supplemental to his principal statement, to which Secretary Ballinger replied under date of September 9, 1909.

At your request I have undertaken to summarize the contents of these papers, and their effect upon the charges made by Mr. Glavis.

COAL-LAND LAWS.

A brief statement of the laws relating to the granting of coal lands of the United States is necessary to an understanding of the controversy.

Sections 2347, 2348, 2350, and 2352 of United States Revised Statutes contain provisions for the sale of lands in the United States containing coal. By section 2347—

Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

By section 2348 it is provided:

* * * That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Section 2350 provides that:

The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; * * *.

In *United States v. Trinidad Coal and Coke Company* (137 U. S., 160), where officers, stockholders, and employees of a private corporation formed a scheme whereby they made entries in their individual names (but really for the benefit of such corporation) of vacant coal lands of the United States, the scheme was carried out and patents were issued to such individuals, who immediately conveyed the legal title to the corporation, which bore all the expenses and costs of patenting the lands; and some of the members of the

corporation had previously taken the benefit of the statute relating to the disposal of public coal lands, it was held by the Supreme Court that such a transaction was in violation of the sections of the Revised Statutes above referred to, and that the patents thereto would be canceled on suit by the United States. The principle of this decision was reaffirmed in the case of *United States v. Keitel* (211 U. S., 370).

The general coal land laws of the United States were extended to Alaska by the act of June 6, 1900 (31 Stat., 658), but were inoperative because under those laws entries could not be made upon unsurveyed lands, public surveys not having been extended to Alaska. By the act of April 28, 1904 (33 Stat., 523), the said act of 1900 was amended so as to permit qualified individuals or associations to locate coal lands in Alaska on unsurveyed lands in tracts not exceeding 160 acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be easily and readily traced, and within one year from making such location to file for record with the district recorder a notice of such location, and at any time within three years after such notice of location to file with the register and receiver of the district in which the lands are situated an application for patent to the lands, accompanied by a certified copy of a plat of survey, etc. Provision was made for the publication of notice of the filing of such application, for the filing of adverse claims to an entry, and the trial of such adverse claims in a court of competent jurisdiction in Alaska, and for the issue of a patent in conformity with the final decree of such court, or, in the event of no such claims, for the allowance of final entry and the issuance of patent for the claim. Section 2 of said act permitted the assignment of such locations and also provided that payment should be made for lands so patented at the rate of \$10 per acre.

This law was construed by a circular approved by Secretary of the Interior Garfield, April 12, 1907, to permit assignments to qualified assignees, and to permit the entry of not exceeding 160 acres by one person, 320 acres by an association of qualified persons, and not exceeding 640 acres to an association of not less than four qualified persons who shall have expended not less than \$5,000 in working or improving a mine or mines of coal upon the public lands.

CUNNINGHAM LOCATIONS.

In the months of July and August, 1904, 33 locations of approximately 160 acres each of coal lands were made in Alaska in the names of a number of different individuals, acting by Clarence Cunningham as their attorney in fact.

INSTRUCTIONS TO SPECIAL AGENT LOVE.

On October 6 and 17 and November 1, 1905, H. K. Love, special agent of the Land Office, stationed in Alaska, addressed communications to the Land Office relating to coal-land locations in Alaska, which are summarized in a letter of instructions addressed to him by Commissioner W. A. Richards, under date of December 11, 1905 (S. Rec., p. 14), as follows:

You state that there are about 500 coal filings of record in the office of the United States commissioner at Catalla, of which 117 have been filed in the local land office at Juneau, but the latter will be increased to correspond with the local record; that these claims are almost invariably taken in groups and with a few exceptions by persons under previous contract to sell to some person or corporation to be named by actual purchaser; that powers of attorney are secured from friends gratis or from others for a nominal consideration under which locations are made in groups, of which one covers over 31 claims; that a corporation is organized and members solicited; that the claim is made in the name of the members and that said company proceeds by this method to secure large tracts; that a concerted movement appears to be under way to cover all the coal lands available in the district of Alaska by this method and in the interest of and benefit of the persons who are conducting such schemes; that you have made an exhaustive study of the coal-land laws and of rulings found in the land decisions from which you conclude that there is no objection to some of the methods used, but that others contravene the law.

Special Agent Love then formulated a number of inquiries, reported that the "parties and companies engaged in these matters in nearly every instance are located at Seattle, Wash., and Portland, Oreg., where information in regard to the same must be sought," and asked to be speedily instructed as to his proper course, referring to his plan to leave Juneau about February 1, 1906, for an absence of five or six months in the interior of Alaska, during which time he could devote himself to the investigation of the bona fides of such locations, unless it be preferred to await the time of entry.

He also submitted certain questions which had been propounded to him by Mr. H. R. Harriman, of Seattle, Wash., on October 10, 1905, much to the same effect as those which he had put—and from which it is gathered that a concerted effort is under way in the above district to at least obtain control of large tracts of lands believed to be valuable for coal. (S. Rec., p. 16.)

The commissioner replied that these questions were such as could hardly be made the basis of any definite instructions that would govern his actions or control the local officers in any case coming regularly before them:

The determination of each case must, as you are aware, depend upon the circumstances and facts developed therein, all of which must be measured by the laws and official regulations governing such case.

Reference was then made to the regulation of July 18, 1904 (33 L. D., 114), under the act of April 28, 1904 (33 Stat., 523), and Mr. Love was informed that the regulations under the coal land law must be given an interpretation in harmony with the rulings of the General Land Office under the act of April 28, 1904, to the effect that any person or association of persons is limited to 160 acres as the area of coal land which he or they may acquire; that while it was clearly within the contemplation of Congress to permit the formation of companies to take a limited area of the public coal land, to permit such companies to make large expenditures necessary to their development the area to be entered by such association of persons was limited to not exceeding 160 acres to each individual person, 320 acres to an association, or 640 acres to an association of not less than four persons who shall have expended not less than \$5,000 in working or improving the mine or mines. The letter concluded as follows:

You will proceed in accordance herewith and whenever it comes to your notice that persons or associations of persons are endeavoring to proceed in what you consider a violation of the law and official regulations, you will make written protest to the local officers and furnish them any information you may have as a basis of your protest and request a rejection of the claim in the event entry is sought, if the facts stated justify such action, or in case of doubt request said officers to suspend the application until the same can be thoroughly investigated. They are expected in all cases to fully cooperate with you in these matters and share with you the responsibility of protecting the public land from unlawful appropriation as well as requiring a strict compliance by claimants thereto of such laws and official regulations as govern the lands sought to be entered. (S. Rec., p. 20.)

Mr. Love was further advised that in order that he might have notice of all action taken in regard to the making of entries of public land, of whatsoever character, the local officers had been instructed to furnish him with a copy of the notice issued by them of the intention of claimants to make entry, at the time of its issuance; and he was instructed to carefully consider such notice and return it to the local officers within the time of the taking of the proof, with such indorsement thereon as he was able to make as to the actual status of the case, and such recommendation as he might deem proper, such instructions being in accordance with the general circular to special agents of the General Land Office, dated August 31, 1905. (S. Rec., p. 20.)

WITHDRAWAL FROM ENTRY OF ALASKA COAL LANDS.

On September 1, 1906, the Acting Commissioner of the General Land Office advised the register and receiver at Juneau that all public lands on the coasts of islands of the Bering Sea containing coal

ledges had been withdrawn from any disposition under the public land laws. (S. Rec., p. 3.)

On November 3, 1906, the Acting Director of the Geological Survey advised the Secretary of the Interior that the coal and lignite deposits of Alaska were known to be of commercial value, and much attention had been given to their investigation by the Geological Survey.

The reasons for withdrawing this coal from entry are fully as urgent as in case of that in the Western States and Territories, and I therefore suggest that the matter be brought to the attention of the President. Since the land office surveys have not yet been generally extended over Alaska, the coal lands can not be designated by legal subdivision, and I therefore recommend that the order suspending coal entries be made to apply to the entire territory. (S. Rec., pp. 5-6.)

On November 7, 1906, the President directed that this proposed action be taken (S. Rec., p. 7), and on November 12, 1906, the Secretary ordered all lands in the District of Alaska to be withdrawn from filing and entry under the coal land laws. (S. Rec., p. 8.) This order was modified December 17, 1906, so as to provide for the withdrawal of such lands from coal entry merely. (S. Rec., pp. 7-8.) On January 15, 1907, by direction of the President, these orders were amended by adding the following:

Nothing in any withdrawal of lands from coal entry heretofore made shall impair any right acquired in good faith under the coal land laws and existent at the date of such withdrawal. (S. Rec., p. 13.)

On May 16, 1907, a circular letter of instructions was issued by R. A. Ballinger, Commissioner of the General Land Office, with the written approval of Secretary Garfield, interpreting the orders of withdrawal above cited, as follows:

4. All qualified persons or associations of qualified persons who may have in good faith legally filed valid notices of location under the act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such persons, may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you, as hereinafter required, will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed exclusive of such time.

6. * * *

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a

protest against the validity of the location or claim embraced in any such application you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon. (G. L. O., file No. 2, Part I.)

CUNNINGHAM ENTRIES.

In July and August, 1904, notices of location of 33 different coal-land claims of 160 acres each, by various qualified persons, acting by Clarence Cunningham as their attorney in fact, were filed in the office of the Juneau recording district. (P., p. 8.) In February, March, and April, 1907, entries were made in the Juneau office on 30 of said locations, made as above provided; and in the month of October, 1907, upon the remaining 3 of said locations; the claims were properly advertised, no protests or adverse claims were filed, the purchase price of \$10 an acre was paid upon each entry, for which receiver's final receipts were regularly issued, pursuant to the Rules and Regulations of the General Land Office. (P., pp. 8-9.) The acreage in the 33 claims is approximately 5,280, and approximately \$52,800 was paid and covered in the Treasury of the United States. (Id.) No patents have ever been issued for these lands.

Prior to making these entries, and under date of February 6, 1906, Mr. Clarence Cunningham wrote the Commissioner of the General Land Office, advising that for himself and as an agent for a number of others he (Cunningham) had secured a number of claims of 160 acres each to coal lands in Alaska, had had the same surveyed, and had expended a large amount in the development of the work, and was then publishing notices as basis for entry, and that he proposed at the proper time to submit proof and make entry; that each claimant was paying for the work done on his own claim and expected to derive all the benefit therefrom, but that owing to the nature of the country and in the interests of economical mining it would be necessary to run a long cross-cut tunnel to reach the coal measures at a considerable depth in order that the coal veins might be cut and proper drainage secured. That the cost of this would be too great for any individual to bear alone, and its benefits would accrue equally to all claims located on the belt after they were fully opened, and he inquired whether these coal claimants could form a voluntary association to jointly construct a tunnel without prejudicing their right to secure title from the Government before said title was actually secured. He inclosed a pencil sketch indicating the location of the various claims and the situation of the proposed tunnel, stating that the ground was very mountainous and abrupt, making it impracticable to open each claim with shaft or tunnel because of inability to reach them with roads or trams. (S. Rec., p. 130.)

Acting Commissioner J. H. Fimple in reply, while advising that it was contrary to the practice of the office to undertake to render an

authoritative or binding opinion in any case other than one in which the record had been regularly transmitted for consideration and action, stated:

However, in view of the interests involved it is not deemed improper to state that, while the construction of tunnel such as proposed would call for close scrutiny of each entry made for claims in this group as to the good faith of the entryman and as to whether he was securing his claim strictly for his own use and not directly or indirectly for the use or benefit of others or of an association or corporation, yet it is believed that the construction of the proposed drainage and working tunnel by a voluntary association to be composed of a portion or all of the coal claimants interested in the group by means of their own personal and private funds would not militate against the making of coal entries by the several claimants and would not imperil their right to secure patent upon said entries. The issuance of patent would, without doubt, be delayed until a full investigation of the matter could be had and the land department be fully advised as to all the facts in the premises. (S. Rec., pp. 130-131.)

Clarence Cunningham, in an affidavit in which he called the attention of the department to the foregoing letter, sworn to April 28, 1908, states:

that before the receipt of the letter of February 24, 1906, and in response to the inquiries directed to the department by affiant, affiant received from the Department of the Interior a communication acknowledging receipt of his letter and advising him that the matter had been referred to the Attorney-General for an opinion, and that thereafter the letter hereto attached was received. (S. Rec., p. 129.)

FIRST REPORT AS TO CUNNINGHAM ENTRIES BY SPECIAL AGENT LOVE.

On August 2, 1907, Special Agent Love reported to the Commissioner of the Land Office that certain individuals, whom he named, had recently, through Clarence Cunningham as agent, entered at the land office, Juneau, coal lands within the Kyak recording district (Katalla), Alaska, which were then pending in the General Land Office on application for patent. That

In a recent conversation with Mr. Cunningham, who is fully informed on all matters past and all future plans of his principals, he stated that it had always been the hope of these several persons that arrangements might be effected after entry for the joint working of the lands, and that since entry in the local office an effort had been made by him to secure the formation of a company from among the entrymen for the purpose of developing and operating a coal mine of the tracts so entered; that for such purpose a meeting of such entrymen was recently held at Spokane, and a committee appointed for the promotion of such an organization and to secure the transfer of the various holdings to a trust company, subject to the perfection of such plans; that such is now in the course of formation.

At different dates I have recommended to the register and receiver, Juneau, the allowance of the applications of the above entrymen. I

believe the action of entrymen toward the formation of a company, pending patent, as above set out, to be allowable under the law, but deem it proper to lay the information before you. (S. Rec., pp. 29-30.)

INVESTIGATION INTO CUNNINGHAM ENTRIES BY SPECIAL AGENT JONES.

Prior to the receipt of this letter, and under date of June 21, 1907, Fred Dennett, Acting Commissioner of the General Land Office, has written to Horace T. Jones, special agent at Portland, Oreg., calling his attention to the letters previously submitted by Special Agent Love with regard to the entry of coal lands in Alaska, and to certain other information which had been received by the General Land Office, and instructing him that:

It is desired by this office that you make a thorough, complete, and energetic investigation of the charges contained in Mr. Duffield's letter and those referred to in Mr. White's affidavit, and any other like violations of the law in reference to coal entries in that locality. This you will do to the exclusion of any other business, and you will confine your efforts to these cases until such time as you have thoroughly covered the whole field of investigation.

* * * * *

From time to time as this investigation progresses, and as you take affidavits, you will submit preliminary reports, informing this office of the progress you are making and attach thereto copies of the affidavits and other evidence secured by you. (S. Rec., pp. 24-25.)

On June 27, 1907, Mr. Jones telegraphed that he would start the investigation at once. (S. Rec., p. 26). On July 22, 1907, Special Agent Love was directed verbally by the commissioner to join Mr. Jones in the investigation. (S. Rec., p. 32). On August 10, 1907, Special Agent Jones reported to the Commissioner of the Land Office, as follows:

After a trip to the United States land office at Juneau, Alaska, Mr. Jones came to Seattle, Wash., with a complete list of all coal-land filings in the United States land office at Juneau made to the date of Mr. Jones's departure for Seattle. The said applications, or filings, numbered 523, 33 of which, in the group hereinafter referred to as the "Cunningham group," have had entry made upon them.

On July 22, 1907, Mr. H. K. Love, special agent of the General Land Office, was directed verbally by the honorable commissioner to join with Mr. Jones in the investigation of the matters herein referred to. Mr. Love attended to the Seattle portion of the investigation and Mr. Jones to the part covered by the work done in Spokane, Wash., and Portland, Oreg.

After conferring on several different dates with the honorable commissioner, it was decided that it would be sufficient, for the time being, to take statements from two or three of the persons representing each "group" of entries and in that way obtain a general idea of how far the parties taking coal lands in Alaska were complying

• Mr. Ballinger.

with the requirements of the laws with respect to the manner of obtaining title thereto.

Mr. Jones further reported that since beginning the investigation they had taken about 25 statements from the different persons representing the aforesaid groups, which statements were attached thereto, one of which, No. 21, referred to the Cunningham group. The report concluded with the following paragraph:

In view of the fact that the majority of the statements taken in this matter seem to indicate that the lands which are the subject of this investigation appear to have been taken under, to say the least, a misapprehension of the rights of the parties to combine and locate together under one financial arrangement, it is respectfully recommended that a strict investigation be further made of each and every locator's connection with other locators in the groups above mentioned. This is particularly necessary in the matter of the locations made by Christopher, Simmonds, Doughten, Stracey, and Chezum. (S. Rec., pp. 34-36.)

It will be observed that the Cunningham locations are not included in those as to which a strict investigation is said to be "particularly necessary."

On August 13, 1907, Special Agent Jones made a further report, giving a list of names and addresses of applicants for use in a further investigation of the frauds in coal lands in Alaska, and stating:

From the talk of different attorneys and individuals interested in the Alaska coal lands, I feel that the disposal of the lands all tends toward one direction, and that is, the Guggenheim companies. * * *

and he closes by again recommending that—

these entries be carefully investigated by an experienced and fearless agent. (S. Rec., pp. 37-48.)

GLAVIS'S CHARGES.

The first charge made by Glavis is stated in his summary as follows:

While Mr. R. A. Ballinger was Commissioner of the General Land Office, Special Agent Horace Tillard Jones was directed by letter dated June 22, 1907, to make a thorough and complete investigation of the Alaska coal cases. This letter was signed by Acting Commissioner Dennett. One month later Mr. Ballinger verbally instructed Jones to make only a preliminary investigation. August 10, 1907, Agent Jones submitted a report showing fraud and recommending full investigation. August 13, 1907, Agent Jones made further report stating that the attempted acquisition of the lands all tend toward one direction, namely, the Guggenheim companies. Mr. Jones again urged further investigation. Nothing further was done until November 12, 1907 * * * (p. 2).

In his statement or report he says that—

Former Special Agent H. K. Love first had these cases under investigation, but did practically nothing, so that the investigation did not

actually commence until June 21, 1907, when Acting Commissioner Fred Dennett directed Special Agent Horace Tillard Jones to make a thorough, complete, and energetic investigation of the cases.

The records above referred to show that, so far from Special Agent Love doing nothing in these cases, it was he who had first called them to the attention of the Land Office; that he had acted with respect to them in exact conformity with the instructions issued to him by Commissioner Richards, and based upon his reports the above-quoted instructions were given to Special Agent Jones; and that pursuant to the verbal instructions of the Commissioner he had assisted Special Agent Jones in acquiring the information embodied in the reports of the latter, dated August 10 and August 13, 1907. Moreover, it appears that as a result of these investigations the issue of patents on these entries was withheld.

Mr. Schwartz states that at the time the reports of Special Agent Jones were received, there were about 30,000 suspended cases on the field dockets throughout the public land States, and a field corps of about 120 men, and a number of other large land fraud cases were demanding all the attention which the General Land Office could command. (S. Rec., p. 49.)

Mr. Glavis's statement that "one month later Mr. Ballinger verbally instructed Jones to make only a preliminary investigation," is stigmatized by Secretary Ballinger as untrue and attention is called by him to the statement in Exhibit 2 of the letter of Special Agent Horace T. Jones, dated August 10, 1907, to the Commissioner of the General Land Office, wherein he states:

After conferring on several different dates with the honorable Commissioner, it was decided that it would be sufficient *for the time being* to take statements from two or three persons representing each "group" of entries and in that way obtain a general idea of how far the parties taking coal lands in Alaska were complying with the requirements of the law with respect to the manner of obtaining title thereto. (B., 15.)

Secretary Ballinger states that this was substantially the result of two or three conferences which Mr. Jones had with him during the summer of 1907 at Seattle; that his purpose in getting reports to obtain a general idea respecting the manner of taking these claims was to aid him in reporting to the Secretary respecting further general congressional legislation affecting coal lands in Alaska. He did not deem it advisable that Jones should proceed to Chicago, Detroit, and other points to interrogate entrymen where they could be reached by chiefs of field divisions, such as Colter at Duluth, who was subsequently instructed to investigate alleged dummy entrymen in connection with the other pending cases. Moreover, he was not satisfied that Special Agent Jones was qualified to make a thorough

investigation and complete report upon these entries. His instructions had been given him by the acting commissioner on June 21 after Mr. Ballinger left Washington. (B., p. 16.)

Instead of nothing further being done after the receipt of Mr. Jones's reports of August, 1907, until November 12, 1907, as Mr. Glavis asserts, on September 24, 1907, Mr. Dennett, Assistant Commissioner of the General Land Office, wrote to S. J. Colter, chief of field division at Duluth, advising him of all the information which had been obtained by the General Land Office from Special Agents Love and Jones with respect to the alleged frauds in the coal-land entries in Alaska, inclosing a list giving the name and address of the applicant, number of the declaratory statement, and the name of the agent through whom the application was made, involving persons located in Chicago, Ill., and vicinity, and instructing him to proceed to that city, there to endeavor by investigation and interviews with entrymen to develop the true state of facts under which these entries were made.

"If your investigation discloses the fact that the applicants or other persons involved are guilty of criminal action, you will carry on the investigation looking to obtaining evidence which may be submitted to the grand jury for the purpose of securing indictments. If you secure evidence that any particular coal land location involved in this case is fraudulent, you will give the claimant opportunity to relinquish his claim." And he was directed to transmit his report at the earliest possible date with the proper recommendation. (D. Exhibit 8.)

INVESTIGATION BY GLAVIS INTO CHARGES AGAINST SPECIAL AGENT LOVE

On October 28, 1907, protests were filed in the General Land Office by W. M. Bruner and P. J. Brussard, affecting the sufficiency of a certain entry known as "soldiers additional application No. 69," made February 20, 1906, by Charles Davis, of Seattle, Wash., an assignee of George Bell, at Juneau, Alaska. The protest of Bruner contained the statement that—

it is a matter of common report and alleged knowledge that Special Agent Love, of the Land Department, is the owner of one or more of said lots, and is holding the same either in his own name or that of his wife; hence, he is an interested party and not competent to make an unbiased report on a protest filed against said entry.

L. R. Glavis, chief of field division, then at Portland, Oreg., was by telegram instructed to proceed to Seattle and investigate this protest. On November 12, 1907, he reported to the commissioner, Mr. Ballinger, as follows:

I interviewed Charles D. Davis, son of Clark Davis, and secured his affidavit, a copy of which is hereto attached. I also interviewed

W. G. Rogers and Walter French. They all speak in the highest terms of Special Agent Love, and from what they state I am of the opinion that the insinuations made against the said soldier's additional application can not be sustained by the facts. I presented the said protests to the United States attorney, who is of the opinion that prosecution under amended Revised Statute 4746 could not be maintained against Bruner, since his charges are based upon "common report and alleged knowledge." * * *

He, however, advised that the charges against the sufficiency of the application should be investigated by a special agent upon the ground. He adds:

In investigating this case I find that Clark Davis and his associates are the owners of the Catalla Petroleum and Coal Company, who are endeavoring to secure large tracts of coal lands near Catalla, Alaska, and from my conversations with young Mr. Davis there can be no doubt that the company are endeavoring to acquire more coal land than they are entitled to under the law. At the time I endeavored to secure an affidavit from young Mr. Davis in regard to their coal claims, but he refused to make any, stating that during your visit to Seattle last summer the matter had been thoroughly explained to you and that you had advised them not to make any statement until charges had been made, in order that you would know what they had to meet. Mr. Davis had undoubtedly misquoted you in this respect, or they failed to give you all the facts in the case. I would, therefore, respectfully recommend that if it is desired that I further investigate these protests that I also be authorized to thoroughly investigate the coal land filings and entries made by the said Clark Davis and his associates. (Glavis, Exhibit 4.)

Glavis comments on this statement by saying:

No answer was ever received by Glavis. (Summary, p. 2.)
and again:

In acting upon this report Mr. Ballinger failed to take notice of the statements made to me by young Mr. Davis, but approved the soldier's additional application for patent without further investigation. (Page 6.)

and at the foot of the copy of the letter (Exhibit 4 to his statement) is the notation:

December 12, 1907, commission approved entry for patent without further investigation.

In answer to these statements, Mr. Ballinger says:

I can not state whether any specific answer was made to this letter (Exhibit 4), as the subject-matter was handled by Division "P" of the General Land Office. I did, however, state to Glavis in conversation that there was no truth in young Davis's statement. (B., p. 16.)

GLAVIS'S CHARGES AGAINST SPECIAL AGENT LOVE.

"Believing that the Government should thoroughly investigate these coal cases," Mr. Glavis says in his statement, "I wrote a personal letter some time during November, 1907, to my chief, Mr. H. H.

Schwartz, and asked permission to proceed to Washington to discuss what action should be taken. About December 1, I received a telegram to proceed to Washington (this telegram is of record). Upon my arrival at Washington I explained to Commissioner Ballinger that I was quite positive that all of the Alaska coal filings were fraudulent and mentioned particularly the Cunningham group.

"I advised him further that Agent Love was not a proper person to investigate these cases and should not be allowed to work in Alaska, since he was an active candidate for appointment as United States marshal, and I did not believe that under such circumstances he could make impartial reports, especially since the support of several of the coal claimants were considered quite necessary to secure the appointment.

"Mr. Ballinger concurred in this view and stated that he thought Agent Love should not perform work in Alaska while he was a candidate for the marshalship. Mr. Ballinger then stated that many of the coal claimants were his personal friends, but directed me to assume charge of the cases and make a thorough investigation; and on December 28, 1907, he sent me a letter to that effect." (Glavis, pp. 6-7.)

Mr. Ballinger characterizes as untrue so much of this statement as asserts that Glavis advised him that practically all the claims were fraudulent, and that Agent Love was not reliable. (B., p. 17.) Mr. Glavis's assertion at this place, as well as on page 2 of his summary, that Agent Love was not reliable, is at variance with the report made by Glavis on November 12, 1907, only about one month prior to the time that he states that he advised Mr. Ballinger that Agent Love was not reliable, in which he reports that, after an investigation into the allegations against Mr. Love, he found that all those whom he consulted spoke in the highest terms of him.

* * * and from what they state I am of the opinion that the insinuations made against the said soldier's additional application can not be sustained by the facts. (Glavis, Exhibit 4, p. 1.)

In a letter addressed by Mr. Glavis to the commissioner (Mr. Ballinger) on January 22, 1908, he again made reflections upon Agent Love, saying:

I am advised by Mr. Jones that Agent Love assisted him a little in the investigation of the coal cases, but he did not go to Spokane, where the claimants reside, whose entries have been clear listed. Shortly after the preliminary investigation by Agents Love and Jones, I understand that Agent Love returned to Alaska, where he has since remained, but since there are not more than two or three entrymen in this group whom Agent Love could have interviewed in Alaska, I am unable to understand how he could intelligently report on the said entries.

While in the office last month I was directed to take charge of all the Alaska coal cases, among which were the foregoing entries, and by your letter "P," H. H. S., December 28, 1907, you directed me to advise Special Agent Love that he would do only such work upon the coal cases which I deemed it advisable for him to perform. Feeling that that matter was left entirely to my discretion, I immediately

directed Mr. Love to take no further action unless otherwise directed. I did this because it was quite generally known that Mr. Love is an active candidate for appointment to one of the United States marshalships in Alaska, and while not questioning his integrity, still his judgment is likely to be a little warped. While Mr. Love was in Seattle last summer he told Agent Jones that he was glad he would not have to investigate the Alaska coal cases because he had to live up there and he did not desire the enmity of the people, some of those involved being his friends. * * *

In view of Agent Love's political aspirations and because of the conclusions reached by Agent Jones in his preliminary report, I respectfully recommend that the order clearlisting said entries be revoked pending my investigation. (G., pp. 10-11.)

Again, in his letter to the commissioner (Mr. Dennett), dated March 21, 1909, Glavis refers to Mr. Love's investigation, and says:

In the spring of 1907 former Special Agent H. K. Love commenced an investigation, but owing to his political ambitions and his intimate friendship with some of the persons involved, Special Agent Horace Tillard Jones was directed, under date of June 21, 1907, to make a thorough and complete investigation of these cases, * * *

and he adds that owing to Jones's unfamiliarity and Love's unfamiliarity or prejudice in favor of the claimants they each were unsuccessful in securing damaging evidence. (G., p. 16.) Mr. Glavis does not include in his statement a letter addressed to him by Commissioner of the Land Office Dennett, under date of March 14, 1908, referring to the foregoing letter of January 22, 1908, advising him that the matter had been called to the attention of the President and desiring that he procure from Special Agent Jones—

an affidavit setting up in detail the time, place, and circumstances under which this conversation took place and the conversation with such particularity as it can be set out. It is probable that this and other matters will be called to the attention of Mr. Love for the purpose of requiring an explanation as to his attitude in regard to Alaska matters, and you will, therefore, proceed in this matter with the knowledge that such issue may result.

If you are in possession of any information of your own which will bear upon the question of either Mr. Love's integrity or of his bias or judgment in reference to the official matters with which he has been charged, you are directed to make report to this office thereon. (S. Rec., pp. 68-69.)

It does not appear from the statements and documents under consideration what, if any, answer Glavis made to this communication, but it does appear that after the investigation Mr. Love was appointed by President Roosevelt as marshal for the third (now the fourth) judicial district of Alaska. (D., pp. 18-19; S., p. 15.)

GLAVIS PLACED IN CHARGE OF ALASKA COAL CASES.

On December 28, 1907, as appears from Mr. Glavis's statement, he was directed in writing by Commissioner Ballinger to take over the

investigation of charges of irregularity in reference to the acquisition and entry of coal lands within the district of Alaska, and to take the action necessary in each instance to protect the interests of the Government in said lands, and to take up with the proper United States attorney the question of criminal proceedings against any parties liable under the law. He was supplied with copies of the reports theretofore made by Special Agents Love and Jones, and of Chief of Field Division Colter. He was instructed to inform Special Agent Love that he had been placed in charge of investigation of matters relating to Alaska coal lands, and that he (Love) would perform such services in regard to those cases as Glavis might direct, reporting to the latter in the premises; that in the meantime the General Land Office had directed Chief of Field Division Colter to visit Detroit and there make an investigation as to the facts and circumstances under which a large number of residents of that city made coal declaratory statements for Alaska coal lands, and he was instructed:

from time to time and as rapidly as possible, make separate reports upon individual entries or separate groups of entries to the end that action may be taken without further delay. (G. Ex., 5; S. Rec., pp. 59-60.)

CLEAR LISTING OF CUNNINGHAM CLAIMS AND WITHDRAWAL OF SAME.

In Glavis's summary he says:

However, on January 7, 1908, only ten days later, Assistant Commissioner Dennett, directed that the Cunningham group of 33 claims proceed to patent, basing his action upon report of Agent Love, but contrary to recommendations of Agents Jones and Glavis. On the same date, January 7, 1908, Commissioner Ballinger wired Agent Love to send plats of the claims, necessary for use in writing patents. Issuance of patents was prevented by Agent Glavis protesting by wire and report January 22, 1908. (G., p. 3.)

Referring to this statement, Mr. Schwartz says:

No recommendation was ever, to my knowledge, made by either Jones or Glavis prior to the telegram of January 23, 1908, and the records of the department show none. On the contrary, at the time of said clear listing the information in the office in relation to the Cunningham entries consisted of the report of Agent Love, herein after referred to, and two reports from Agent Jones. The reports of the latter are general as to the Alaska situation, consisting of a tabulation of the record of evidence in the land office at Juneau and the submission of two or three affidavits from different individuals in different groups, and recommended further investigation (S. 16.)

The reports from Agent Jones of August 3 and August 10, 1907, and Exhibit 21, referred to by Agent Jones in the report of August 10, 1907, show that the entrymen in the Cunningham group were not

"dummy" entrymen, but that the alleged invalidity of the entries was based upon a preliminary agreement between the entrymen to operate jointly after patent issued, and thereafter to hold their ownership and beneficial interest in the form of stock in an association composed of entrymen. (See Schwartz, in S. Rec., p. 50; also S. Exhibit 10.)

The copy of the records in the General Land Office relating to the "Cunningham" claims contains a number of letters bearing on these matters not furnished in Glavis's statement. Mr. Schwartz states that in December, 1907, some of the entrymen in the Cunningham group appeared before Commissioner Ballinger and were heard orally upon the bona fides of their claims. "My recollection is that there was consideration of the question whether a tentative agreement to combine and operate jointly after patent issued, and thereafter hold their ownership and beneficial interest in the form of stock in an association composed of entrymen, would invalidate claims, where each man has paid all expense and purchase price of his own claim." Upon that proposition he states Mr. Dennett and the mineral-land lawyer of the department, Mr. E. C. Finney, and Mr. Ballinger were of the opinion that the claims would be valid. At that time the report of Special Agent Love, then on file in the department, was all the department had on the Cunningham claims, and it was favorable to the entrymen and showed that the plan of consolidation was tentative, and that the entrymen had completed their entries and made payment. Commissioner Ballinger, in view of this state of the records, directed that the claims be clear listed and sent to the mineral division for approval for patent if the papers were regular, and that Chief of Field Division Glavis be notified that these claims were clear listed upon Love's report of date August 2, 1907. (S. Rec., p. 50.) Thereupon Chief of Field Service Schwartz issued an order, under date of December 26, 1907, to Mr. J. T. Murphy:

Upon the attached report from Special Agent Love, you will please notify Division N that the Alaska coal land entries in said report mentioned are clear listed as to Division P. You will also notify Chief of Field Division Glavis. (S. Rec., p. 55.)

On January 4, 1908, Chief of Division N was notified accordingly by Chief Schwartz (S. Rec., 56), and on January 7, 1908, Assistant Commissioner Dennett wrote Glavis at Portland, inclosing for his information "a list of Alaska coal entries, which, upon report of Special Agent Love, have been clear listed in Division P, and referred to Division N for action." (S. Rec., p. 57.)

Glavis in his summary states "issuance of patents was prevented by Agent Glavis protesting in wire and report dated January 22, 1908" (p. 3), and in his statement he says, "Under these circum-

stances I vigorously protested against the issuance of patents, and on January 22, 1908, I sent the following telegram and letter." The telegram to the commissioner reads:

Coal entries mentioned your letter January 7 should not be clear listed. Letter follows. (G. 9.)

This telegram was referred to Division P, and immediately upon its receipt, Chief of Field Service Schwartz recalled the order clear listing the coal entries and directed that further action be not taken in connection with said entries until further advised. (S. Rec., 62-63.)

Glavis's letter of January 22, 1908, acknowledged receipt of the letter of January 7 from the Commissioner of the General Land Office and stated that:

During the summer of 1907 said entries, among others, were partially investigated by Special Agent H. T. Jones, who under date of August 10, 1907, reported that from the preliminary investigation made he believed that the said entries were fraudulent, and recommended further investigation.

Twice since making said report Mr. Jones has called your attention to the same, recommending further investigation of all the Alaska coal cases. (G., p. 10.)

Reference to Special Agent Jones's report shows that no special mention was made therein of this particular group of claims. There was transmitted with that report a statement, marked "Exhibit 21," which refers to the Cunningham claims, and consists of affidavits by two of the locators stating the circumstances under which they had located and their intentions to develop the property through concerted action. (S. Ex. 10.)

The report of August 10, 1907, while recommending strict investigation, makes no specific reference to the Cunningham claims, nor does the further report of August 13, 1907, although in Love's report of August 2, 1907, a brief statement was made of the question affecting those entries, and Mr. Love expressed an opinion favorable to the entrymen. It is therefore perfectly obvious that the action of the Commissioner [Ballinger] in directing that the Cunningham claims be clear listed was in accordance with the only specific recommendation of one of the agents who had investigated the claims then in the department, and that it was out of abundant precaution in the protection of the public interest that he required notice of this action to be sent to Special Agent Glavis in advance of the issue of any patents, so that he might advise the General Land Office in case he knew of any reason why these particular claims should not pass to patent. So far from requiring a "vigorous protest," the mere telegram from Glavis stating that the claims should not be clear listed caused them to be recalled by Mr. Schwartz. That action by Mr. Glavis appears by his letter to have been based entirely upon a

general suspicion that all Alaska coal entries were fraudulent, and that the reports of Mr. Love were not reliable because of his political ambitions rather than by reason of any evidence within his knowledge as to these particular claims.

Mr. Glavis does not include, among the letters submitted by him, one written to him by Commissioner Dennett, under date of February 5, 1908, as follows:

I am in receipt of your letter of January 22, 1908, asking for the further suspension of certain Alaska coal entries, known as the "Cunningham group." These entries had been clear listed upon a report of Special Agent Love, and subsequently upon wire from you the suspension was reinstated. In concluding your letter you say that: "I expect to be able to submit a report thereon within a few months."

This is not sufficient. The office feels that applicants to purchase coal lands in Alaska have, for reasons not in any way chargeable to you, already been considerably delayed.

You will, therefore, on receipt of this letter, proceed to Spokane and complete your investigation and make final report as to these claims.

I inclose you herewith copy of letter and telegram reports from Special Agent Love upon which the cases in question were clearlisted. The office will also give consideration to the other matters referred to in your letter of the 22d ultimo. (S. Rec., pp. 63-64.)

Mr. Glavis does include in his statement a letter written to him by Special Agent Jones under date of December 2, 1907, which apparently was procured by him to be written before he had been intrusted with the consideration of the Alaska coal cases and while he was endeavoring to secure control of them. The letter contains a report of alleged conversations of Mr. Jones with Mr. Ballinger, while commissioner of the General Land Office, in which Mr. Ballinger is stated to have expressed opinions unfavorable to the state of the law as it then affected the Alaska coal-land entries. Jones says that after receiving instructions to go to Alaska and make investigation in the matter he returned to Seattle and saw Judge Ballinger, who:

probably believing that I was more familiar with the procedure of the office in regard to investigations of alleged frauds, left the matter to me for the time being. About this time I had met Mr. H. K. Love, special agent located in Alaska, and I took him to Judge Ballinger's office and introduced him to the Judge. Mr. Love was desirous of prolonging his stay in Seattle, for family reasons, and it was agreed that he should assist in the investigation of these entries. He took the affidavits of quite a number of persons, some of them prominent men of Seattle, and I took several. (G. p. 3.)

This letter was in Glavis's possession when he wrote to Commissioner Dennett, on January 22, 1908, that Agent Love

did not go to Spokane, where the claimants reside, whose entries have been clear listed, shortly after the preliminary investigation by

Agents Love and Jones. I understand that Agent Love returned to Alaska, where he has since remained, but since there are not more than two or three entrymen in this group whom Agent Love could have interviewed in Alaska, I am unable to understand how he could intelligently report on the said entries. (G., p. 10.)

Moreover, the report of Special Agent Jones, dated August 13, 1907, shows that only 11 of the entrymen in the Cunningham group resided at Spokane, while 21 resided in other parts of the State of Washington. (S. Rec., pp. 37-48.) Jones's letter to Glavis of December 2, 1907, describes the method of procedure which Jones and Love adopted to carry out the Commissioner's instructions:

to get data concerning each group of entries for said lands, so as to enable him to speak intelligently before Congress. (G., 4.)

Jones says he went to Portland and Spokane and interviewed five or six entrymen in each town, endeavoring to get one or two of each group as requested. He then returned to Seattle, within ten days, and found that Love had interviewed Lippy, Munday, and others.

Munday, Love, and I had a conference with Judge B. in the Judge's office, and Munday made a plain statement of what he intended to do. He said, in so many words, that he intended to get as much coal land as possible. He admitted that he had other people file on lands for him and in one or two instances, if I remember correctly, he had supplied the money himself. I recollect that Munday and I had quite an argument at the time. He said that he wanted to go about this matter in the proper way and did not want to get anything illegally and that he did not think that he was getting anything illegally. *I said that if the procurement of persons who did not have money to make the payments required by law and whose rights were merely being used by Munday and his associates for their own gain was proceeding in a legal manner, then my knowledge of the spirit of all land laws was very defective, as I supposed that one could not barter away his rights or give another an interest therein before getting title to the land.*

The Judge was asked by Munday to say whether or not his scheme for getting these lands was legal but the Judge refused to commit himself.

* * * * *

There was no concealment of facts in any instance during my investigation, by the applicants, except in the case of a man in Spokane who was engineering the Doughten deal. I do not recollect his name, but he denied that he had had anything to do with the matter. All the other applicants came out boldly in their statements. Those who were financing a company or had stock in some organization based upon this coal land frankly told me what they expected to do with the land and answered every other question that I asked with equal frankness. (G., 5.)

It will be observed that the statements in this letter do not correspond with those in Jones's reports of August 10 and August 13, 1909, above quoted, where there is no allusion to entries by "dummy"

entrymen, but the questions involved are stated to depend on the intention of the entrymen to operate in combination with each other.

SECRETARY BALLINGER'S PROFESSIONAL RELATIONS TO CUNNINGHAM CLAIMANTS.

In Glavis's summary it is stated:

In March, 1908, Mr. Ballinger resigned as commissioner, returned to Seattle, and practiced law. He was retained as legal representative for the Cunningham group and by a large number of others interested in the coal fields. Mr. Ballinger represented such claimants until he became secretary. (G., p. 3.)

The same statement is made in the more detailed charges. (G., 13.) In answering this statement, Mr. Ballinger says:

I deny I was retained as "legal representative" of the Cunningham group and by a large number of others interested in the coal fields and that I represented such claimants until I became Secretary. The only professional connection I had with the Cunningham group of coal entries was as given in my general statement hereto attached, and I advised or received retainers from no other group of entrymen or individual entrymen, except in the preparation of articles of incorporation to enable them to be brought under the act of May 28, 1908, as heretofore stated. (B., p. 18.)

Mr. Ballinger further states that after he had resigned as Commissioner of the General Land Office and returned home—

Mr. Cunningham did not call upon me professionally at this time, as I recall it, but complained of the manner in which he had been treated by Special Agent Glavis, claiming that Glavis had stolen from him a memorandum book which he had permitted Glavis to see when he took his (Cunningham's) affidavit, in connection with the method of entry of the Cunningham claims. He stated that this memorandum book had been forwarded by Glavis and made a part of the Land Office files. Either then or subsequently, he showed me a copy of the affidavit which Glavis had taken, and also a letter written by Assistant Commissioner Fimple in regard to the right of entrymen jointly working coal entries. I told Mr. Cunningham that the Fimple letter was not a departmental ruling (as he was Assistant Commissioner of the Land Office) that would bind the department, and would not save him or his group of entries against the charge of consolidation or combination in violation of the statute, and at a subsequent date, which I do not now remember, suggested an amendment to his former affidavit, which he made by explaining in detail what he meant by certain terms used in his former affidavit.

I had at different times during that summer conversations with Mr. Clarence Cunningham, Mr. C. J. Smith, of Seattle, Mr. John A. Finch, of Spokane, and Mr. Henry Wick, of Ohio, in regard to these entries. My attitude with them in all conversations was to the effect that I did not believe, in view of the state of the record, that they could secure patents under the law, unless they were willing to take advantage of the statute of May 28, 1908, which would permit, if they had otherwise complied with the law, a consolidation of entries

to the extent of 2,560 acres, with limitations against monopoly and restraint of trade in coal, etc. Mr. Smith protested that this law was so unreasonable that they would be unable to borrow the money so as to develop the consolidated claims under the act of May 28, 1908; that no one would loan money under such rigid limitation of possible forfeiture through the fault of an agent or employee of the company. Knowing that I anticipated a trip East, Mr. Smith and Mr. Cunningham earnestly solicited me to call upon Secretary Garfield to see if anything could be done with their claims looking to the issuance of patent.

I consented to see Secretary Garfield and discuss the matter with him, as well as with Commissioner Dennett, and see what the department considered it was able to do under the law. I made, during the summer, a special trip to West Mentor, Ohio, to see Mr. Garfield in respect to this matter, and also spoke to Mr. Dennett about it, my principal contention being that the book that was in dispute was not proper evidence to show conspiracy against the individual entrymen who had no knowledge of the matters noted therein, and for the further reason that the memoranda was made long prior to the locations upon which they were seeking patents, and upon locations which were attempted to be made under the placer mineral laws which were claimed to have been subsequently abandoned and reentered under the law of April 28, 1904. I remember saying to Mr. Garfield that, notwithstanding this, the facts relating to their method of working the claim might be embarrassing as showing an intention to consolidate their entries and preclude their securing patents unless they came under the new law. Mr. Garfield was firm in his position as well as Mr. Dennett, that they must bring themselves under the new law of May 28, 1908, if they expected to secure patents for this group of claims. In view of the circumstances, I was unwilling to further urge action upon the department, as I found the attitude of both Mr. Garfield and Mr. Dennett the same as I had anticipated, and, returning to Seattle, so advised Mr. Cunningham and Mr. Smith. It will be understood that this law of May 28, 1908, was passed after I had resigned as Commissioner of the General Land Office, and except for the circulars received, I was not advised as to the attitude of the department respecting the same until I had my conversation with Secretary Garfield at West Mentor.

As Commissioner of the General Land Office I had drafted the Cale bill, which was introduced in the House through the Committee on Public Lands, which provided a method of consolidation and disposal of Alaska coal lands, with provisions restraining combinations tending to create a monopoly in the mining or sale of coal. The act of May 28, 1908, was, in a measure, an outgrowth of this Cale bill, and also followed the principle involved in the recommendations contained in my official report for 1907 as Commissioner of the General Land Office, to which reference is respectfully made.

I received from Mr. Smith and Mr. Cunningham \$200 or \$250 to cover expenses in connection with my visit to the East. This is all that was ever paid to me, or my firm, in connection with this matter, and no fee was ever charged unless the surplus of this money was applied for services.

On returning to Seattle, as above stated, I advised Mr. Smith and Mr. Cunningham of the attitude of Secretary Garfield, and told them

that Secretary Garfield had intimated to me that they might secure patents to their claims if they were willing to come in under the act of May 28, 1908. I further said to them that they were likely to be cited to show cause why their claims should not be canceled unless they brought themselves under that statute.

Shortly after this time Mr. Glavis furnished me a copy of the opinion rendered by Judge Hanford in the case of the United States *v.* Portland Coal and Coke Company et al., October 5, 1908, which I gave to Mr. Smith, and told him I thought it had a close application to the facts in his case, which decision was adverse to the defendants, the coal claimants.

I had nothing to do with these cases after this, having abandoned my connection with them, believing that it was futile to undertake to assist the parties inasmuch as they were obdurate in taking advantage of the law of May 28, 1908.

Some time in the late fall of 1908, Mr. John A. Finch, of Spokane, one of the entrymen in the Cunningham group of claims, called at my office with Mr. Cunningham, and Mr. Henry Wick, of Ohio (also an entryman), and I think one other person, and asked me in a friendly way to state to Mr. Wick what I thought the situation was as to the possibility of their securing patents. I frankly stated that I did not believe the department would grant the patents in view of the record under the law of April 28, 1904; that proceedings were likely to be brought at an early date seeking to cancel their entries unless they undertook to incorporate and bring themselves under the act of May 28, 1908; that if they consolidated as provided by that act certain groups of claims, and secured their patents, they could apply to Congress for remedial legislation in order to obviate the difficulties which Mr. Smith contended would prevent them from financing and operating the mines. Mr. Finch heartily agreed with my suggestion and in my presence urged Mr. Cunningham to follow the same, but Mr. Cunningham insisted that it was not practicable.

This covers in full my relations with the Cunningham group of coal entries in Alaska, as respects advice, conference, counsel, or interest looking to their securing patents to these lands.

I had given no further consideration to these entries and had nothing further to do with them prior to my appointment as Secretary of the Interior. (B., pp. 2-6.)

NEW LEGISLATION OF 1908.

Secretary Garfield in his report of the year 1907, touching on coal lands, advocated the leasing of such lands rather than granting them in fee by the Government, and in this connection made the following recommendation:

Under the existing law no one individual is permitted to purchase more than 160 acres, nor can an association or corporation purchase more than 320 acres. In some fields containing the highest grade of coal it would be possible to develop a mine profitably on this small acreage, but in the very great majority of instances a much larger acreage is necessary.

While many of the difficulties which have arisen regarding the enforcement of the law have been due to unwise restrictions imposed by the statute, yet neither an executive officer nor a court is justified in refusing to enforce the law and impose the penalty because he does not agree with or believe in the wisdom of the statute. If men commit perjury or cause others to commit perjury for the purpose of evading the law they can not properly plead as an excuse the fact that they could not operate a mine on an area to which the law restricted them. Because of these serious defects Congress has been asked, and will be asked again, to consider the amendment of this statute. I can not urge too strongly the need of a change in the policy hitherto adopted by the Government for the disposition of the coal land.

The coal remaining in the public domain should be so used as to induce its development in accordance with the needs of the country, but at the same time to prevent waste or monopolization in the hands of a few. In order to accomplish these purposes the man or the corporation producing the coal must be given an area sufficiently large to warrant the expenditure of the money necessary to profitably develop and market the coal. (D., p. 73.)

President Roosevelt, in his message to the Sixtieth Congress, after discussing the desirability of the Government retaining the right to keep the fee of the coal, oil, and gas fields in its possession, and to lease the rights to develop them under proper regulations, or to sell the coal deposits under limitations to conserve them as public utilities, said:

The regulations should permit coal lands to be worked in sufficient quantity by the several corporations. The present limitations have been absurd, excessive, and serve no useful purpose, and often render it necessary that there should be either fraud or else abandonment of the work of getting out the coal.

Referring to Alaska, he said:

The coal-land laws should be changed so as to meet the peculiar needs of the Territory. This should be attended to at once; for the present laws permit individuals to locate large areas of the public domains for speculative purposes, and cause an immense amount of trouble, fraud, and litigation. (D., p. 72.)

On February 27, 1908, Mr. Cale introduced in the House of Representatives a bill entitled "a bill to provide for the sale of coal deposits in the district of Alaska, and for other purposes." (H. R. 18198.) This was referred to the Committee on the Public Lands. On April 20, 1908, Mr. Mondell also introduced a bill entitled "a bill to encourage the development of coal deposits in the district of Alaska" (H. R. 21412), which was referred to the Committee on the Public Lands and ordered to be printed. On April 23, 1908, Mr. Heyburn introduced a bill in the Senate (S. 6805) entitled "a bill to encourage the development of coal deposits in the Territory of Alaska," which was referred to the Committee on Public Lands.

The Senate Committee on Public Lands referred the latter bill to the Secretary of the Interior [Garfield] for information and advice on the subject.

On May 3, 1908, Secretary Garfield reported to the Senate Committee on Public Lands as follows:

I have the honor to report that since November 12, 1906, coal lands in the District of Alaska have been withdrawn from location, and filings and entries have been allowed only upon claims initiated prior thereto. The surveyor-general for Alaska has reported the approval of 251 surveys of coal claims aggregating 37,000 acres. Final entry has been made of 33 of said claims, approximating in area 5,000 acres. This department is without accurate information as to the total number of locations made prior to the date mentioned, as many of them are doubtless yet unsurveyed.

I am of opinion that the right to perfect entry of consolidated claims should be confined to persons, associations, or corporations, all of whose members or stockholders are qualified to make entry of coal lands, thus conforming to construction of existing laws by the courts and by this department, and that the area permitted to be embraced in such consolidated entry should not exceed four sections, 2,560 acres.

* * * * *

I call your attention to the fact that if this bill should pass in its present form it would confirm many claims which have been initiated contrary to the provisions of existing law by the use of so-called "dummy entrymen." Therefore, I suggest that the bill be amended by inserting after the word "Alaska" in line 4 of page 1 the following: "solely in their own interest and not as the employed agent of another." (G. L. O. file No. 2, Part I, p. 32.)

Section 1 of the bill referred to reads as follows:

That all persons, their heirs or assigns, who have made locations of coal lands in the Territory of Alaska at the time of the passage of this act may consolidate their said claims or locations by including in a single claim or location not to exceed three thousand two hundred acres of contiguous lands, and for this purpose such persons, their heirs or assigns, may form associations or corporations, or may transfer their said claims to other persons, associations, or corporations, a majority of whose members or shareholders are qualified to make entry of coal lands, who may perfect entry of and acquire title to said lands in accordance with the other provisions of law under which said locations were originally made, * * *

Another bill had been introduced entitled "A bill to provide for the entry and sale of public lands containing coal" (H. R. 19421), which was referred to Secretary Garfield for examination. In his report, dated April 20, 1908 (D. Ex., 1), he pointed out that section 9 of that bill

practically confirms all disputed entries or locations made under the coal-land laws, if the price therefor, as of the date of such entry or location, has been or shall be paid. It would seem advisable to

extend opportunity for relief to those who are under charge of acquiring coal land under other laws, or indirectly acquired a larger area than the existing coal laws permitted, because the passage of this bill by Congress will recognize the fact that the existing coal-land laws are not practicable. Their impracticability has helped bring about the practice of attempting to evade them. The culpability of such evasion is admitted. Yet if, after the passage of this bill, those under charge of wrongful action should be willing to take their land with the very considerable penalty of assuming all the burdens and restrictions of the new law, it would seem proper to confirm their right to so much of the land as shall not exceed in area the maximum amount which might be acquired under this bill.

I therefore suggest as a substitute for section 9 of the bill the following:

"SEC. 9. That any persons, associations, or corporations who have obtained, prior to the passage of this act, claim or title to any coal lands of the United States by alleged unlawful means, shall, upon proof to the satisfaction of the Secretary of the Interior that the full coal land price of such land, as classified by said Secretary under authority of law, has been paid to the United States, have their patents confirmed for not to exceed two thousand five hundred sixty acres of such coal lands, if patents have issued, or if patents have not issued, shall receive patents for not to exceed said area: * * *."

This substituted section offers opportunity for relief, and at the same time automatically carries with it a punishment proportioned to the value of the coal lands in question. * * *

And he further suggested adding sections extending the provisions of this bill to Alaska. In other words, Secretary of the Interior Garfield explicitly recommended compromising all question of illegality in the location and entry of coal lands, to the extent of 2,560 acres, upon payment of the classified price for the same as fixed by the Secretary of the Interior.

Much discussion ensued over these proposed measures. On May 13, 1907, Secretary Garfield transmitted to Senator Flint a bill for Alaska "which is very nearly like Senator Heyburn's and Mr. Mondell's bills, introduced to meet the difficulties now existing in that Territory." (G. L. O. files No. 2, Part I, p. 35.) This bill authorized "all persons, their heirs and assigns, who have made locations of coal lands in the Territory of Alaska solely in their own interest and not as the employed agents of others," prior to November 12, 1906, or in accordance with the circular of instructions of May 16, 1907, to "consolidate their claims or locations" to the extent of 2,560 acres of contiguous land. (G. L. O. files No. 2, Part I, p. 36.)

May 12, 1908, the Committee on the Public Lands reported to the House a substitute measure for Senate bill 6805, which was passed by both Houses and approved May 28, 1908, being entitled "An act to encourage the development of coal deposits in the Territory of Alaska."

DISPUTED CONSTRUCTION OF ACT OF 1908.

Section 1 of this act provided:

That all persons, their heirs and assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest,

prior to November 12, 1906, or in accordance with the circular of instructions issued by the Secretary of the Interior May 16, 1907—may consolidate their said claims or locations by including in a single claim, location, or purchase, not to exceed 2,560 acres * * * and for this purpose might form associations or corporations to perfect entry and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made.

Immediately after the passage of this act, in connection with the preparation of a circular letter of instructions for procedure under it, a difference of opinion as to its proper construction developed between Mr. Woodruff, Assistant Attorney-General for the Interior Department, and Mr. Schwartz and Mr. Dennett. Mr. Schwartz prepared a careful analysis of the act, in which he contended that the act applied only to persons who had made locations in good faith in their own interests, and that when a corporation applied to enter consolidated claims:

There should also be filed with each corporate or association application an affidavit from the original owner, heir or assignee of each claim showing said claim was located in good faith by said person in his own interest, and not in the interest of, for the benefit of, or at the request of, or as employee or agent of any other person, firm, or corporation, and that the said claim was so held by said locator, heir or lawful assignee until the date when transferred to said corporation; that said transfer was for the purpose of permitting affiant to consolidate said claim with others under the act of May 28, 1908; that affiant shall also show the capital stock of said corporation, the number of shares by him received for his claim and that he holds said shares unincumbered, * * *. (S., p. 11.)

Mr. Dennett states that while the proposed regulations were under preparation he directed Mr. Finney to prepare (as he did) a memorandum for Secretary Garfield, setting forth Commissioner Dennett's views of the proper construction of the act, which differed somewhat from those of Mr. Schwartz, and suggested a much stricter interpretation of the act than was given by the proposed circular. "He is further of the opinion that the act was not intended to benefit those who had really made the locations, not in their own interest, but in the interest of other individuals or of corporations." (D. Ex., 3.) Assistant Secretary Pierce on July 3, 1908, sent to Secretary Garfield at San Francisco, Cal., the circular which he and Mr. Woodruff thought should be approved, which gave a much broader construction to the act than Mr. Schwartz and Mr. Dennett thought advisable.

The circular stated as a qualification of applicants for a consolidated claim under the act that each member of the association

* * * must be shown to be qualified to make entry under the coal land laws applicable to Alaska and to be the owner by location, inheritance, or purchase of an undivided interest in the consolidated claim * * *.

A corporation applying to consolidate its claims must show at date of application that not less than 70 per cent of its stock is held by persons qualified to enter coal lands in Alaska, and to this end each such application must be accompanied by a list of the stockholders, showing their respective holdings of stock in the corporation and the personal affidavits of those holding such 65 per cent of the capital stock, showing their qualifications under the law.

PENDING ENTRIES.

Claims embraced in unpatented entries, if the entrymen shall so elect, may be consolidated into a single entry under this act, upon presentation of a proper application therefor, "within twelve months from date hereof." (D. Ex. 15.)

Mr. Garfield, by telegram of July 11, approved the draft of the circular, with the exception of a definition of the phrase "persons qualified to enter coal lands," contained in the draft, which he thought might be too narrow, and with that eliminated authorized the issue of the proposed instructions in accordance with such draft. (D. Ex. 5.) The circular was accordingly issued under date of June 27, 1908. (G. L. O. file No. 2, pt. 2.)

In the fall of 1908 there was organized in the departments a sort of board of cooperation, and Mr. Schwartz says "in the hopes of getting in the circular an amendment which would require such an initial showing on the part of the claimants as would disclose the real situation, or at least furnish my agents with a basis on which to acquire it," on December 16, 1908, he delivered to Mr. Woodruff a memorandum setting up his views as to the proper construction and effect of the act of 1908, and suggesting that the committees on cooperation take up the question and ascertain whether more stringent regulations are warranted as to Alaska coal land laws. (S., 11-12.) In the course of this memorandum Mr. Schwartz said:

Suppose in five or ten years Guggenheim shall have acquired control of these lands? Will it be charged to Secretary Garfield and Commissioner Dennett? And will Congress be able to say—as it can in the timber and stone act—that the department has taken the first paragraph of the act of May 28, 1908, and in effect changed "may consolidate" to "who have heretofore consolidated;" and when the act says that for the *purpose of consolidating* (bona fide claims) persons "*may form* * * * corporations," we have in effect said that corporations "*heretofore formed*," and having *heretofore*

consolidated claims by taking unlawful assignments, may now make final proof and get patent unless a special agent can jimmy into the inner consciousness of these entrymen and compel them to admit, in words, they were dummies from the first? (S., 12.)

December 29, 1908, Assistant Attorney-General Woodruff wrote to Commissioner Dennett asking him to have Mr. Schwartz, in conjunction with Mr. Finney or Judge Witten, prepare a suggested modification of the regulations concerning "consolidations" of coal locations in Alaska along the lines suggested by him to Mr. Schwartz, which they would then take up carefully and in cooperation.

Personally [he said] I am pleased beyond measure to notice officials using the foresight and forethought expressed in Mr. Schwartz's fears concerning the effect of the regulations. I agree with him thoroughly that it is up to us all to protect the Secretary and you from criticism that you fall short of grasping the full meaning of the "consolidation" act, and that by so doing you give to any person, corporation, or trust the monopoly of coal in Alaska. It may be nothing can be done under the law, but I would like to see Mr. Schwartz prepare suggested modification of the regulations in order that, if legally possible, it may be adopted. (D. Ex. XVIII.)

Mr. Schwartz thereupon prepared a memorandum (D. Ex., 19), which Mr. Dennett at first signed, but on reading it over he saw that it did not coincide with his views, in that Mr. Schwartz insisted on the invalidity of all agreements made prior to the passage of the act. Mr. Dennett did not agree with Mr. Schwartz on that point, and put a memorandum on the letter to hold, expecting to take the matter up more fully, but it was postponed and did not come up again until May, 1909, after a conference between Secretary Ballinger, Mr. Schwartz, and himself. (D., 78.)

The letter, as drafted by Mr. Dennett, and so signed, expressed the opinion that the act—

* * * does not by its terms, either expressly or impliedly, cure or confirm any entries which prior to its passage were subject to cancellation for fraud; that the act is intended to, and does, provide a method by which persons who, prior to November 12, 1906, had in good faith and in their own interests made coal entries might on or after May 28, 1908, consolidate their claims or locations; and for that purpose they might on or after May 28, 1908, form "associations or corporations" to perfect such entries; * * *. (D. Ex. XIX.)

SUSPENSION OF GLAVIS'S INVESTIGATION IN SPRING OF 1908.

Glavis's summary (p. 3) proceeds as follows:

During the spring of 1908 Glavis was securing valuable evidence when Commissioner Dennett ordered him to postpone investigations, although Glavis advised him that to defer action would lessen the government's chances to cancel the claims. On October 7, 1908,

Glavis was directed to complete investigation within sixty days, totally inadequate time, as Glavis advised Commissioner Dennett by telegram. (See also his report, p. 14.)

The following letters and telegrams are not included in M. C. Moore's statement. On April 11, 1908, in writing, he requested the General Land Office to—

Forward to me at Portland all original papers relating to Alaska coal cash entries and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitations will prevent criminal prosecution after next October. The cases therefore must be presented next month. Only Simmonds and Christopherson groups now involved, but all papers are necessary should others develop as time would then be too limited to secure same. (D., 24.)

On April 13, 1908, the General Land Office telegraphed him:

No entries of papers in this office except Cunningham group. Register and receiver at Juneau telegraphed to forward papers. (D., 24.)

On the same day Commissioner Dennett instructed the register and receiver at Juneau by telegram to—

Forward to Louis R. Glavis, chief of field division, Portland, Oreg., all original papers coal cash entries and coal declaratory statements of locations. (D., 25.)

May 20, 1908, the register and receiver advised Commissioner Dennett that—

Upon receipt of your telegraphic instructions of April 13, 1908, all of the papers on file in this office relating to coal land declaratory statements and pending application and entries were prepared and forwarded to L. R. Glavis, chief of field division, Portland, as there in directed. (D., p. 25.)

Commissioner Dennett in his statement says:

When Mr. Glavis was here in May, 1909, I called his attention to the fact that complaints were being made that these papers were not on file in the local land office, and therefore were not open to consultation. He cited the authority which was given the register and receiver at Juneau to send these papers to him, and under which he held them. Upon my asking him whether they had been submitted to the grand jury he said "No." * * * Mr. Glavis still has, I am informed, these papers. (D., p. 25.)

And, he might have added, he has never taken any action whatever to bring those criminal prosecutions which he advised the Land Office must be brought before October, 1908, to escape the bar of the statute of limitations.

On March 17, 1908, M. C. Moore, one of the Cunningham entrymen, wrote to the Commissioner of the Land Office complaining of the delay in the issuance of patents, and urging—

if there is any failure to comply strictly with Alaska coal land laws, or the federal statutes, or if fraud is charged, the nature of the irregularities or the charge should be made known. (S. Rec., 70-71)

On March 28, 1908, Commissioner Dennett telegraphed Glavis:

Wire date this office will receive report Cunningham group in Alaska coal entries. Answer by wire quick.

March 30, Glavis replied:

Matter mentioned in your wire 28th. Will report Cunningham group for cancellation. Owing to transfer being made with Neuhausen and other matters it is impossible to complete investigation before May. Entry men involved appear to be well informed concerning all action as shown by your files. Should contents herein be learned additional information will be made impossible. (S. Rec., 72.)

By letter dated April 20, 1908, which is not included or referred to in Glavis's summary or report, he transmitted to Chief of Field Service Schwartz, a journal relative to the Cunningham group of coal entries, secured by him from Clarence Cunningham, entryman and agent for a large number of coal-land entrymen in Alaska, together with an affidavit of Cunningham taken by him, and copies of other affidavits admitting the statement made in the Cunningham affidavit to be true. Besides this journal Glavis stated he had also secured numerous other exhibits showing an additional understanding and agreement in so far as the pooling was concerned. He also stated:

Before I am able to complete my report it will be necessary for me to interview one of the entrymen, now at Los Angeles, Cal., and I expect to procure from him a full and complete confession concerning the agreement appearing on page 1 of the journal, and also the reference to W. B. Heyburn found on page 5. Should it be determined to institute criminal proceedings, I am quite sure that I will be able to secure all the stenographer's notebooks containing letters dictated by Clarence Cunningham to Mr. Heyburn. (S. Rec., p. 77.)

The journal referred to in the affidavits and letter contains a full and detailed statement of receipts and disbursements made by Clarence Cunningham for account of the group of persons united with him from February 1, 1903, to December, 1907 (S. Rec., pp. 92-127), and two affidavits of Clarence Cunningham relating to the entries in this book were transmitted with it to the General Land Office.

Referring to his telegram of March 30, above quoted, Glavis, in his statement, continues:

The improper information which the claimants in the Cunningham group had secured in Washington was related to me by one of the claimants, ex-Governor Miles C. Moore, who happened in at the Ranier Grand Hotel in Washington during the afternoon while I was taking the affidavit of Clarence Cunningham. Mr. Moore said to me that Mr. Ballinger had arranged to patent the Cunningham entries and would have done so had I not sent a telegram asking that patent be withheld until an investigation could be made. This nearly frustrated our efforts to secure the facts, since Mr. Cunning-

ham was under the impression that I was investigating a complaint which alleged that the Guggenheim syndicate controlled the claim.

He loaned me his books to disapprove this supposed complaint, forgetting at the time that while his books disproved the alleged control by the Guggenheims, they conclusively proved collusion and fraud on the part of the claimants themselves. (G., pp. 13-14.)

As to this Mr. Dennett says:

I can but say that his subsequent assertions as to what Governor Moore stated do not sustain him. There are no files guarded more than the files of the reports of special agents. * * * I do not know how Governor Moore obtained the fact asserted, but that in advance of a patent is held up at the request of a special agent is not necessarily held to be a secret, as are the contents of the agent's report. An interested party is entitled to know what is the status of his claim, though not the character of the protest until service of charges. (D., p. 20.)

The record shows that Mr. Cunningham and other representatives of the entrymen embraced in the Cunningham group were in Washington in the spring of 1908 in the interests of the pending legislation above referred to. Moreover, the entrymen, of course, knew that the matter had been held up pending investigation and they must have learned the general nature of the objections to patent.

While the affidavit of Clarence Cunningham, sworn to March 1908 (S. Rec., pp. 77-79), dealt principally with facts going to show that the Guggenheim syndicate was not directly or indirectly interested in the coal fields embraced in these entries, the affidavit of O. Jones, one of the other entrymen of the same group, sworn to March 5, 1908, dealt principally with facts going to show that the entrymen were not "dummies;" that they had advanced their own money to pay for the land which "was expended by Cunningham to develop and improve the coal field as a whole;" and further going on to show that while nearly all of the 32 claimants were acquainted with each other—

the matter of the formation of a company was never formally discussed at any of our meetings, but we have discussed this question among ourselves as we were well satisfied that we could not handle the claims individually; * * * we have therefore understood among ourselves that when title had been secured we would form a company and combine the entire group; this was, however, positively the only understanding; we had no written agreement or any written instrument whatsoever. * * * (S. Rec., p. 89.)

Agent Love reported, August 2, 1907, he had conversed with Cunningham on this same subject and had from him a statement as to the facts concerning the understanding of the entrymen that they were to develop all of the entries as a whole, through a company to be formed by them. (S. Rec., p. 30.)

The assumption in Mr. Glavis's statement that Mr. Cunningham could have supposed that the only obstacle to the granting of

patent was the question whether or not the Guggenheim syndicate controlled the claims is therefore entirely at variance with the facts shown in the record. There is no other statement of fact made by Mr. Glavis to sustain the allegation that improper information had been secured by the claimants in the Cunningham group, or that his efforts to secure the facts had been nearly frustrated or in any way impaired by reason of obtaining such information.

As to the effect of the alleged disclosure of information by the department, it may be observed in passing that Mr. Glavis states that while Cunningham's books disproved the alleged control by the Guggenheims, "they conclusively proved collusion and fraud on the part of the claimants themselves."

Glavis does not give either a copy or the date of the telegram which he says was sent to him by Commissioner Dennett instructing him to discontinue the investigation, although he says he had advised Mr. Dennett by wire that to discontinue the same would greatly lessen the Government's chance to secure sufficient evidence to cancel these fraudulent applications. (G., p. 14.)

Mr. Dennett's telegram to discontinue was dated May 2, 1908. (S. 22.)

It will be noted that, as above mentioned, on April 20, Glavis had written to Mr. Schwartz indicating that in order to complete his report it was only necessary for him to interview one of the entrymen at Los Angeles, Cal., from whom he expected to procure a full and complete confession concerning the agreement appearing on page 1 of Cunningham's journal, and also with reference to W. B. Heyburn, found on page 5. (S. Rec., p. 76.)

Mr. Glavis's statement would indicate that the notice to discontinue was sent without any previous intimation of such action, and despite protests that it would greatly lessen the Government's chances of success, and the inference is that this action was improper and contrary to the Government's interests. He fails to disclose the circumstances and the record of telegrams and letters leading up to this order.

Mr. Dennett and Mr. Schwartz each state that in April, 1908, the appropriation available for the expenses of the General Land Office was nearly exhausted.

* * * the Oregon cases were calling for immediate attention, and Mr. Glavis had been complaining of the fact that Inspector Neuhausen, who was then working with the Department of Justice, had retained a great number of papers, which rendered it impossible for him as chief to act intelligently. The office just prior to this time was endeavoring to ascertain the exact situation involved in the papers held by Mr. Neuhausen and trying to secure possession of the same. * * * Mr. Glavis urgently represented that there were a large number of cases that needed immediate attention, notably the C. A. Smith entries, in order to prevent the statute of limitations terminating the Government's case. (D., p. 22.)

Mr. Schwartz states that on April 28, 1908, communications were sent to each special agent disbursing officer, including Glavis, calling in funds for a redistribution thereof, with a view to avoiding, so far as possible, discontinuance of pressing work. The letter and telegram to Glavis are as follows:

APRIL 28, 1908.

Mr. LOUIS R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: The condition of the appropriation is such that it will be necessary, in order to carry the present force during the balance of the fiscal year, that the average monthly account of agents, including transportation, shall not exceed the sum of \$250 per month per agent.

You are advised that expenses incurred by you for the last quarter in excess of the sum of \$8,550 will not be paid. It appears from your statement that you had on hand April 1, \$1,180.84. You are advised that during the quarter an additional sum of \$5,369.16 will be deposited to your credit. Should the sundry civil bill, as reported to the House by the Committee on Appropriations, become a law additional funds will be available for the month of June.

Very respectfully,

(Signed)

FRED DENNETT,
Commissioner.

(S., 22-23.)

The following day a telegram was sent to Mr. Glavis, with respect to the civil service status of one of his clerks, stating that her appointment could not be extended, and on the same day he telegraphed to the General Land Office referring to the previous telegram and saying:

* * * If this is rendered necessary by reason of the depletion of the appropriation involved, it would be more economical to furlough Alexander. Spaulding necessary to assist me in interviewing 3 Alaska *coallierymen* located in California. * * *

As the records show that only 2 or 3 of the Cunningham claimants reside in California, 30 in Washington, and 2 in Ohio, it is obvious that this telegram did not refer to the Cunningham claims. (S. 23-4.)

On April 29, 1908, Mr. Glavis again telegraphed as follows:

United States attorney desires investigation of Umatilla cases and of 1,000 cases in which patents must be attacked within next few months. Trial commence May 16. Hearings and Alaska cases will engage force until July. To properly meet situation 7 additional agents necessary.

(Signed)

GLAVIS, *Chief.*

(S., 24)

Mr. Schwartz, after quoting this telegram, says:

The office realized the force of these representations, and that unless special efforts were made in that behalf, prospective action for the recovery of timber lands of immense value, institution of

which was dependent upon field investigations in Oregon, would fail because of the bar of the statute of limitations. No money was available for pay of additional men, so that suggestion could not be met. As heretofore indicated, however, the Alaska coal claims, and particularly the Cunningham claims, had been suspended, and the status thereof could not change; hence, although the necessity therefor was regretted, it was pressing and imperative, and, in order to enable him to cooperate with the United States attorney in pending criminal cases to secure data for proposed civil suits and avoid the statute of limitations, Glavis was wired as follows:

"Discontinue investigations now being made Alaska coal cases. Until letter reaches you defer action. Assign special agents to Oregon matters. Three special agents have been directed by wire to report to you at once for duty. This rendered necessary by reason of the depletion of the appropriation involved. You will govern yourself accordingly.

"DENNETT."

To meet the situation in the civil suits the Attorney-General was conferred with, and the result telegraphed Mr. Glavis on May 6 as follows:

"Attorney-General has wired United States Attorney McCourt authority to file bill in equity in land cases. Assist McCourt with all special agents if necessary. Keep personal command of special agents during all Oregon land fraud cases. Wire for any record wanted from General Land Office or Neuhausen.

"DENNETT, *Commissioner.*"

(S., p. 24.)

Mr. Schwartz, in his original statement (S., p. 24), stated that no advice either by wire or otherwise to the effect that to discontinue investigation would lessen chances of cancellation was ever received at the General Land Office, but by a supplemental letter to you, dated September 10, 1909, he advised you that since the preparation of his formal statement he had found a letter which he transmitted to you, addressed by Mr. Glavis to the Commissioner of the General Land Office, under date of May 1, 1908, and received in Washington on May 6, 1908, in which letter Mr. Glavis says:

As also stated in my telegram, the hearings and Alaska cases will engage the present force until July. A number of more cases are now ready to be set for hearing, so that the hearings will extend until July 1. The Alaska cases are now well under way and could not be dropped without greatly affecting the final outcome of the cases, because we have found, in the majority of the cases, that they are fraudulent, and to definitely postpone further investigation at this time the persons involved would have ample time to advise the other coal claimants who have not, as yet, been interviewed, and in order to complete said cases by July 1 it will require all the time of the other agents who are not engaged in handling the hearings.

* * * I appreciate the fact that the appropriation is possibly running low, and that all the field divisions are in great need of additional agents, but the conditions existing here are not, perhaps, encountered in any other division, * * *.

Mr. Schwartz further says that strenuous efforts were being made to secure from Congress an appropriation adequate to the necessities of the Land Office, and in anticipation of favorable action, on May 12, 1908, having prior to that time secured from the Civil Service Commission authority in the premises, Mr. Schwartz prepared, and Secretary Garfield signed, and sent to Mr. Glavis a letter, authorizing him upon receipt of a wire from the Commissioner of the General Land Office, releasing the letter, to employ a number of extra employees for not exceeding six months. (S., pp. 25-26.) That the purpose was to have about forty qualified persons ready to begin work the day the bill passed. On May 28, 1908, immediately on the passage of the appropriation act, Commissioner Dennett sent a telegram to Glavis, which the latter does not refer to in his statement, saying:

Secretary of Interior letter May 12, released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28, revoked. Push work. (S., p. 26.)

On June 3, 1908, Commissioner Dennett wrote Glavis, sending him a copy of the act approved May 28, 1908, "To encourage the development of coal deposits in the Territory of Alaska," and saying:

You will, therefore, so modify the scope of your investigations and subsequent reports in reference to Alaska coal lands as is made necessary by the terms and provisions of the foregoing bill. (S., p. 27.)

GLAVIS CHARGES THAT HE WAS DIRECTED TO COMPLETE INVESTIGATION IN INADEQUATE TIME.

Glavis, in his summary (p. 3), continues:

On October 7, 1908, Glavis was directed to complete investigation within sixty days, a totally inadequate time, as Glavis advised Commissioner Dennett by telegram.

The only specific instructions with respect to renewing such investigation referred to in Mr. Glavis's statement are those contained in the letter dated October 7, 1908, addressed to him by H. H. Schwartz, Acting Assistant Commissioner (G., Exhibit 8), which letter transmitted to him a copy of an original affidavit of Clarence Cunningham, sworn to September 4, 1908, which had been filed with the Land Office, the letter stating:

Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress in a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

You are directed to complete your investigation along the original lines and so prepare the Government's case as to be able to present all the facts at a hearing, in the event you finally make adverse report and ask for the cancellation of these entries.

This office has been informally advised that the various entrymen, known as the Cunningham group, have concluded to stand upon the old law and ask for a patent upon the now-pending applications. The reports as made by you to this office show that these applications were fraudulent and should be canceled. Proceedings will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the Government's case in the hearing.

No time limit whatever is placed upon Glavis in this letter.

Cunningham's affidavit, so transmitted, contained statements in further explanation of the entries in his private journal, heretofore referred to, and consisted in an effort to show that the proceedings of the entrymen had been entirely within the law. This affidavit, sworn to September 4, 1908, was transmitted to Commissioner Dennett's private secretary on September 17, 1908, with the following memorandum from Secretary Garfield:

The inclosed affidavit in the Cunningham Alaska coal cases is to be filed in Land Office, and direct Dennett to go over it carefully and bring to my attention on my return. *No action to be taken till I come.* (S. Rec., p. 143.)

On September 23, 1908, Mr. Schwartz wrote to the Commissioner of the Land Office a careful analysis of the above-mentioned affidavit, concluding as follows:

I am still of the opinion that these claims were fraudulent, and that the orders issued to Chief of Field Division Glavis at the time the Alaska coal bill was pending in Congress, to temporarily suspend his investigations, should now be revoked, and he should be directed to proceed with a view to establishing by the necessary evidence the complete facts in relation to the Cunningham and Guggenheim claims. (S. Rec., 153.)

Mr. Schwartz was evidently not informed that on May 28, 1908, Commissioner Dennett, by the telegram above quoted, rescinded the suspension and instructed Glavis to "push work."

With respect to Glavis's statement that on October 7, 1908, he was directed to complete investigation within sixty days, a totally inadequate time, as he advised Commissioner Dennett by telegram, Mr. Dennett says this is a misstatement; that no time limit was set. (D., p. 23.) No limit is set in the letter of October 7, 1908. (Glavis, Exhibit 8.) Mr. Schwartz says that no telegram stating that such time was wholly inadequate is of record; that neither Commissioner Dennett nor himself nor anyone in his office had ever seen such a message:

* * * and we have no reason to believe that it was sent. In view of the fact that the instructions which he says elicited the dispatch were not given, it is reasonable to assume that it never had any existence. (S., p. 29.)

The record further shows that in the latter part of September, 1908, Mr. Schwartz met Mr. Glavis at Helena, and, on his request, authorized the employment by him for thirty days of two additional special assistants, and further assigned seven additional men and the entire force available for necessary work in pending court cases, so that as the Acting Secretary of the Interior advised the Attorney-General on September 30, 1908:

* * * Seven additional men and the entire field force available at Portland, Oreg., have been assigned to necessary duty in pending court cases in that district. (S. Rec., pp. 155-157.)

It further appears that on September 18, 1908, Mr. Glavis asked for and received authority to expend \$400 for the purchase of four dogs, and \$100 for the equipment, such as sled, harness, etc. (S. Exhibit 12); that on October 24, 1908, at his request the salaries of all agents, including his own, were increased \$3 per day while on duty in Alaska. (S. Exhibit 13; see also S., 28-29.)

Mr. Schwartz says:

The office assumed, and had a right to assume, that the instructions in letter of October 8 (7?), 1908, would be carried out; and that the directions in letter of June 3, 1908, would be complied with. (S., 29.)

No reports appear to have been made by Mr. Glavis, nor is there anything in the record tending to show any progress made by him in this investigation after the receipt of the letter of October 7, 1908, prior to March 10, 1909.

THE NEW ADMINISTRATION AND ITS POLICY.

The new administration came in on March 5, on which day Mr. Ballinger was appointed Secretary of the Interior, and a day or two later Mr. Schwartz took up with the Secretary the general condition of the field work of the land department, showing some 37,000 cases pending under suspension. They canvassed some of the more important cases, and Mr. Schwartz states that Secretary Ballinger advised him that he would not consider the Cunningham cases because he had prepared an affidavit for Mr. Cunningham, and that Assistant Secretary Pierce would handle the Alaska matters. (S. Rec., p. 160.)

On March 16, 1909, when the increased appropriation became available, new districts of the Land Office were created, and Mr. Glavis was transferred from Portland to Seattle, but was allowed to retain full charge of the Alaska cases. (D., 23.)

Mr. Dennett says:

If there had been any desire on the part of this office to thwart Mr. Glavis in his working on these claims, the best and most efficacious way would have been by retaining Mr. Glavis at Portland and appointing a new chief in Seattle with charge of Alaska cases * * * (D., 23-24.)

By act of March 4, 1909, Congress made the following appropriation:

DEPREDACTIONS ON PUBLIC TIMBER, PROTECTING PUBLIC LANDS, AND SETTLEMENT OF CLAIMS FOR SWAMP LAND AND SWAMP-LAND INDEMNITY: To meet the expenses of protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; of protecting public lands from illegal and fraudulent entry or appropriation, and of adjusting claims for swamp lands, and indemnity for swamp lands, *one million dollars*, to be immediately available, of which sum seven hundred and fifty thousand dollars is for *the purpose of bringing up the work of the General Land Office hereunder so as to make the same current.*

Immediately after Secretary Ballinger assumed office Assistant Secretary Pierce announced that it would be the policy of the department, as suggested in this appropriation, to commence a vigorous campaign to bring the work of the General Land Office up to date, so as to make it current. This policy, he says, has been carried out in all suspended entries in all parts of the United States ever since. (P., p. 2.)

Shortly after assuming the office of Secretary, Mr. Ballinger states that Mr. Falcon Joslin, of Fairbanks, Alaska, called upon him and said he was appointed one of a committee of the American Mining Congress to present the Alaska coal situation to the Interior Department. Mr. Ballinger requested him to take up the matter with Assistant Secretary Pierce, and asked the latter to give a full hearing on the subject and make a report to him, which was done. Copies of the report of that hearing and the report of Mr. Pierce are attached to Mr. Pierce's statement. After that hearing, and before receiving a formal report, Mr. Pierce gave the Secretary the substance of the testimony taken and the request made by Mr. Joslin that—

in so far as existing locations are concerned, all of which were instituted prior to November 12, 1906, the locators desire those claims investigated and patents issued, where the locations are found to be valid, not under the act of 1908, but patented as 160-acre locations under the act of 1904. (P., pp. 3, 66-67.)

With respect to this request, Mr. Pierce noted as his remarks upon it for the consideration of the Secretary:

You have already directed that application for patent to coal claims located prior to November 12, 1906, be speedily investigated and patents issued where no fraud is discovered. So request No. 1 need receive no further attention from you at the present time. (P., pp. 44-45.)

Mr. Ballinger says:

* * * Responsive to Mr. Joslin's requests, I sent for Mr. Schwartz and Mr. Dennett and called in Mr. Pierce, and directed speedy action looking toward the adjustment of the coal situation in

Alaska. Pursuant to my instructions, Commissioner Dennett sent Glavis this telegram:

MARCH 10, 1909.

"Special Agent L. R. GLAVIS,
"Portland, Oreg.:

"Submit at once complete reports on present status investigation all Alaska coal entries. Make separate reports on separate groups and individual reports where you have no information claim is in group. In reporting upon group mention individual claims therein. Your reports should in conclusion place entries in one of four classes, to wit: Claims wherein present information suggests further investigation necessary; second, claims wherein investigations and evidence warrant adverse proceedings at this time; third, claims wherein investigation warrants proceedings to patent; fourth, claims wherein you have no information. Each report should set up or refer to facts upon which conclusion is based. You are authorized to employ extra stenographers for two weeks at twenty-five per week.

"DENNETT, Commissioner."

At the same time [continues Secretary Ballinger] I advised each of these officers of the fact that I had during the summer in a measure advised the people in connection with the Cunningham group of claims, and had prepared articles of incorporation for two or three companies proposing to consolidate under the law of May 28, 1908, and told them that I was disqualified to pass upon these cases and wanted them taken over and handled by Mr. Pierce independent of me and without conference as to individual action in any of the Cunningham cases, but that inasmuch as the entries in these coal fields had remained dormant for several years without definite action on the part of the department, I thought it time that the department should take them up and act upon them after full investigation with the least possible delay. I advised Mr. Dennett that if it were necessary to cancel out all the entries Congress would, possibly, at the solicitation of entrymen aggrieved, take such action as was merited; that I did not want the responsibility of arbitrarily holding up these cases indefinitely, and that I wanted a definite construction given to the act of May 28, 1908. It should be understood that there are approximately 963 suspended coal claims in Alaska that have been pending in the neighborhood of three years. While I had determined to have nothing to do with the Cunningham cases, I intended to see that there was action taken respecting the entire field. (B., pp. 7-8.)

Pursuant to the instructions given in the telegram of March 10, 1909, Mr. Glavis states:

I submitted reports showing the present status of the several groups of cases, and although a majority of them had not then been investigated at all, I felt that the evidence secured and my general information of the situation justified recommendation, which I made in every instance, that further and thorough investigation should be made. (G., p. 15.)

It is assumed that Mr. Glavis referred to the 963 pending entries, excluding the Cunningham case, when he said, "A majority of them

had not been investigated at all," because his report of April 20, 1908, indicated that his investigation into the Cunningham entries lacked only an interview with one of the entrymen in order to conclude it.

GLAVIS'S REPORT AS TO STATUS OF CUNNINGHAM CASE.

Mr. Glavis gives in his statement a copy of his report, dated March 21, 1909, with reference to the "Christopher group" of Alaska coal cases which, he says, is quite similar to the others, including that upon the Cunningham group. His report on the Cunningham group is dated March 23, 1909, and a copy of it is furnished by Mr. Schwartz as a part of the record in the General Land Office relating to the Cunningham case. In it Glavis repeats the insinuations made by him in earlier communications concerning Special Agent Love and Special Agent Jones, refers to his having been intrusted with supervision of all the Alaska coal cases, and states:

During the months of April and May I commenced this investigation and secured about 200 affidavits, but before sufficient time was allowed to complete this work I was directed to postpone taking further action. This, as I advised you by wire, would greatly lessen the Government's chances of securing sufficient evidence to cancel these fraudulent applications. (S. Rec., p. 165.)

The urgent necessity for suspension of the investigation appears from the foregoing statements, and the arrangements made for pushing the work as soon as the new appropriation act was passed. On May 28, 1908, immediately on the passage of the appropriation act, Glavis was instructed by telegram to push his work. No statement is made by Glavis which would indicate that the Government's chances for securing sufficient evidence to cancel the Cunningham applications were in the slightest degree affected by this brief delay, nor to explain why he took no further action whatever before the following October. He says that before the work was discontinued certain affidavits were taken, copies of which were attached to his letter and extracts given in it.

The extract from the affidavit of Clarence Cunningham, which he gives without date, is from that verified March 6, 1908, no mention being made of the two subsequent affidavits made by him which were on file in the department. The other affidavits and papers are also those already on file.

In addition to the affidavits secured [he says], I secured numerous circulars and exhibits, with which you are partially familiar, showing the fraudulent character of this group of entries. (S. Rec., p. 167.)

I state these filings were fraudulently obtained [he says], because if the facts admitted by the agent of the claimants and the claimants, in their affidavits hereto attached, had been set out in the declaratory statements filed in the Land Office, the same could not have been

accepted and allowed without violating the statute. * * * (S. Rec., p. 168.)

In the course of investigation heretofore made I was greatly embarrassed in my work by reason of the fact that many of the claimants appeared to be fully informed as to recommendations previously made by me and concerning the work which I had been directed to perform. It will readily suggest itself no doubt that one is greatly handicapped by being confronted with such a condition, and I respectfully recommend that hereafter due care be taken to prevent the claimants or anyone interested from knowing what has been done or is contemplated.

In view of the foregoing and from my general knowledge of the Alaska coal-land cases I believe further investigation should be made, with a view to the cancellation of the entries. (S. Rec., p. 170.)

On April 16, 1909, Mr. Schwartz submitted the foregoing report to Mr. Carr, the Secretary's private secretary, with a written memorandum. (S. Rec., pp. 179-181.)

I have just seen this report [he says], and to say that I am surprised at its general tenor is putting it rather mild. As a matter of fact, the records disclose—

1. That in December, 1907, while in this city, Mr. Glavis was supplied with a complete copy of all papers, records, and files bearing upon the charges of irregularity in reference to the entry and acquisition of coal lands in the district of Alaska.

2. That December 28, 1907, he was advised that Chief of Field Division Colter was making certain additional investigations in the vicinity of Detroit, Mich., and the letter of that date to Mr. Glavis concludes:

"You will from time to time, as rapidly as possible, make separate reports upon individual entries or separate group of entries, to the end that action may be taken without further delay.

"(Signed) BALLINGER."

3. January 7, 1908, Mr. Glavis was advised that the particular group known as the Cunningham group had been clear listed upon the favorable report of Special Agent Love. [This clear list was immediately withdrawn at the request of Mr. Glavis.]

4. February 5, 1908, Mr. Glavis was advised: "You will, therefore, on receipt of this letter, proceed to Spokane, and complete your investigation, and make your final report as to these claims." (Cunningham group.)

5. Subsequently the coal investigations in Alaska were temporarily suspended, pending a determination of what procedure might be had in view of the coal land legislation of May 28, 1908, which was intended to permit the consolidation of claims in Alaska.

6. October 7, 1908, Mr. Glavis was advised, among other things (quoting from the letter of that date above set forth).

7. Mr. Glavis has since been proceeding under that last instruction. Mr. Glavis's statement that he has been "greatly embarrassed by reason of the fact that many of the claimants appear to be fully informed as to recommendations previously made by me, and concerning the work which I had been directed to perform," is not understood in this office, as claimants have been given no information,

except the general proposition that their claims are suspended at the request of field officers.

I believe the various statements from claimants, quoted by Mr. Glavis, fully show the situation in reference to these claims, and we should determine whether, as a matter of law, this showing warrants a hearing, and if it does, we should advise Mr. Glavis that these cases must be speedily brought to a hearing and the rights of the claimants determined.

Respectfully,

(Signed)

H. H. SCHWARTZ,
Chief of Field Service.

(S. Rec., pp. 179 to 181.)

There were pending, March 4, 1909, in the General Land Office 36,803 cases, and on March 16, 1909, Mr. Schwartz, chief of field service, issued a circular of instructions to each chief of field division, giving particular instructions with respect to an effort to clear up this accumulation and stating the objects in view to be, among others:

Pending cases, including old snags, will all be closed out during the coming fiscal year, so far as departmental action is concerned, in purely departmental cases * * *. Each chief, within his jurisdiction, and the Chief of the Special Service Division in the General Land Office (or other office chief having jurisdiction) will be held directly and personally responsible for the steady and expeditious clearing of the pending dockets. (S., pp. 31-32.)

In April, 1909, Mr. Schwartz sent two new appointees to Mr. Glavis, who wired recommending their transfer to Portland, saying:

More agents unnecessary. Authorize employment two coal experts. (S., p. 32.)

On April 9 the General Land Office acted in accordance with Mr. Glavis's request. (S., p. 32.) On April 14 Secretary Ballinger, expressing great surprise at the number of pending cases shown in the tabulated statement submitted to him, saying, among other things:

I do not wish the department put in the position of encouraging investigations that are not strictly in the interests of protecting the Government on the one hand and the bona fide settler or locator on the other. In all organizations, such as your field organization, the tendency is to extend the field of operation beyond what is reasonable and necessary in the public interest. Your officers, therefore, will have to justify themselves completely in the scope of the investigations which they undertake. (S., p. 33; S., Exhibit 15.)

He further suggested that a conference be had to determine whether there were not, in the 36,000 cases pending, some cases or class of cases which did not really require field investigation. (S. Exhibit 15.) On April 16, 1909, Mr. Schwartz, in a letter to the commissioner, analyzed the work under him and the reasons for the suspensions, and pointed out the fact that of the 36,000 cases 16,745 were suspended by arbitrary rule of the department itself, without relation to the particular merits of the individual cases. (S. Exhibit 16.)

In response to the orders telegraphed to Mr. Glavis, March 10, 1909, Mr. Schwartz says:

He submitted 73 reports, covering all the coal claims in Alaska, between the dates of March 20 and the middle of April, 1909, in each of which he repeated the statements contained in the last half of page 16 and the first half of page 17, and the two paragraphs in the center of page 20 of his statement to you. These I considered an unwarranted reflection upon the Secretary, Commissioner, and the office generally. So far as I am aware, no one except government officials entitled thereto has ever had access to or knowledge of any of the Alaska coal files. Immediately upon receipt of these reports containing the objectionable language, I directed Law Examiner Murphy to draw the files and put them in his desk and only permit their inspection upon order from myself. At the same time, I called the attention of Mr. Carr, private secretary to Judge Ballinger, to the different statements in Mr. Glavis's reports * * *.

referring to his memorandum above mentioned. (S., pp. 34-35.)

On April 9, 1909, Miles C. Moore, of Walla Walla, Wash., wrote to Secretary Ballinger, inquiring concerning the status of certain coal land entries in the Kayak district, Alaska, more especially concerning that one made by himself. (S. Rec., 184-185.) On April 20, 1909, Commissioner Dennett replied that:

The office has, within the current month, received a detailed report from the field as to the status of the various coal entries referred to, and the matters disclosed in said report preclude action on the entries at this time. The further work necessary, by reason of the information now in the possession of the office, will be concluded within the next sixty days, and at that time the record will be in such shape that the entries will be acted upon in this office. (S. Rec., 186.)

Attached to Mr. Moore's letter is the following memorandum:

WASHINGTON, April 14, 1909.

MR. SCHWARTZ:

The entry to which Governor Moore refers as "his" is one of the Cunningham group, I think.

Please send me a note as to how the matter stands. Is Glavis doing anything on Alaska coal matters or is everything "up in the air" as it was some time ago?

(Signed) CARR.

(S. Rec., p. 186.)

On April 20, 1909, as Mr. Glavis says in his statement, Mr. Schwartz wired him:

Alaska coal investigations must be completed within sixty days. What number additional agents do you require? Answer by wire.

On the same date Glavis replied:

To complete Alaska cases in two months Jones and four more agents necessary. Six hundred affidavits to secure. Snow will prevent field examination until July.

On April 27, 1909, Glavis wrote Mr. Schwartz that he was leaving for California to make necessary investigations in that State relative to the Alaska coal cases, having just finished a like investigation in Oregon. He then stated that he was going to Chicago, Detroit, and other places in the Eastern and Middle Western States to continue his investigation. (S. Rec., p. 189.) This obviously did not refer to the Cunningham cases, as none of the entrymen in those cases lived in the places mentioned. (See list in S. Rec., pp. 29, 37.)

Immediately after referring to this letter in his statement, Mr. Glavis says:

With the exception of the Cunningham group, and possibly 50 other filings, none of the 900 claims have been so perfected as to make the issuance of patent upon them possible. (G., p. 21.)

In his summary he says:

At a conference on *March 17* with Mr. Ballinger, Dennett, and Chief of Field Service Schwartz, Glavis asked for construction of amendment to coal-land law. (G., p. 3.)

This date is obviously a mistake; it should be *May 17*, as appears from his longer statement, in which he says:

In the course of my investigations I arrived in Washington, D. C., and on *May 17* at a conference with Secretary Ballinger, Commissioner Dennett, and Chief of Field Service H. H. Schwartz, I expressed the opinion that the act of May 28, 1908, amending the Alaska coal-land laws, would not prevent the cancellation of the filings and entries under investigation since that act only permitted bona fide filings to come within its liberal provisions; and that since these entries were subject to cancellation because of fraud, they could not be considered as bona fide.

Mr. Dennett thought I should make my reports before decision was reached upon that point, but after further discussion Mr. Ballinger agreed to submit the question to the Attorney-General for an opinion and directed Mr. Schwartz and myself to prepare such a letter for his signature. (G., p. 21.)

CONSTRUCTION OF ACT OF 1908 BY INTERIOR DEPARTMENT AND BY ATTORNEY-GENERAL

Glavis states that such a letter, as above suggested, was prepared, but that instead of submitting the letter to the Attorney-General, as agreed, Mr. Ballinger referred the matter to Assistant Secretary Pierce, who made a decision, which he quotes in his statement (P., pp. 22-23); that he was then instructed, first verbally and then in writing, by Commissioner Dennett to submit reports in accordance with that decision; that as he was firmly of the opinion that it was not the intent of the act of May 28, 1908, to validate such fraudulent agreements as outlined in the draft of the letter to the Attorney-General, he secured an interview with the Attorney-General, explained the situation to him; that shortly afterwards the Attorney-General suggested to Mr. Ballinger that the matter be referred to

him, which was done; and on June 12, 1909, the Attorney-General rendered an opinion in which he differed entirely from Assistant Secretary Pierce's construction of the act of May 28, 1908, and held that arrangements of the character indicated were unlawful. (C pp. 21-24.)

The statement of Secretary Ballinger shows that about the middle of May ex-Governor M. C. Moore, of Walla Walla, Wash., called upon him about the Cunningham cases. He at once sent for Mr. Pierce and told Mr. Moore, in the presence of Mr. Pierce, that, inasmuch as he had been called into consultation about these cases, he could have nothing to do with them, and that Governor Moore must take up all matters relating to them with Mr. Pierce. Subsequently, under date of May 22, 1909, Governor Moore wrote to the Secretary complaining of the action of Mr. Pierce as being technical, saying:

The entries in Cunningham's memorandum book, made prior to the extension of the coal-land laws to Alaska, seem to be the bugaboo, although some stress is put upon the fact that there was no understanding to unite these claims after patent. As you know, no agreement was entered into, and if it had been simply a matter of mere reservation, while the result would have been the same we would not have been accused of violating the law. Both Mr. Pierce and Mr. Dennett admit there was neither fraudulent intent nor more turpitude shown. (B., p. 9.)

To which Mr. Ballinger replied, saying:

* * * I can not undertake to issue any order or make any ruling in the matter as requested, because of the embarrassment which would result from the fact that I was, while not holding an official position, called upon to advise in the matter. The case has, however, been carefully looked into, and I wish to say that, in view of all the facts now disclosed, I would, if I were ruling upon the matter, hold that the principle announced in the opinion of Judge Hanford in the case of *United States v. Portland Coal and Coke Company et al.*, October 5, 1908, is directly applicable to these cases, and that if the allegations made be proven, patents can not issue under the provisions of the act of April 28, 1904.

As you have been advised, the department is disposed to give the coal-land act of May 28, 1908, as liberal a construction as is consistent, and if you and your associates desire to take advantage of that, you should proceed in accordance with same, and with circular instructions of July 11, 1908. In this connection attention is directed to the paragraph of instructions entitled "Pending entries." (I pp. 9-10.)

On May 24 Mr. Moore wrote the Secretary, saying that he had addressed a letter to Senator Jones asking him to take up the matter of the delayed patents with the President, but that this was not to be construed as going over the Secretary's head:

Owing to the fact that you were at one time counsel for our people, you can not consistently act. Assistant Secretary Pierce does not understand the case very well and has been influenced by Glavin.

who, having done some disreputable things and become involved in a controversy with Cunningham, is prejudiced and wants vindication. * * * (B., p. 10.)

Secretary Ballinger states that he showed Senator Jones the correspondence between Mr. Moore and himself, and told him he was going direct to the President with the matter and did not intend in any sense to be drawn into it with Mr. Moore; that Mr. Moore's attitude was aggravating and unreasonable. That he also, on the same day, spoke to the Attorney-General about the importance of the Department of Justice rendering an opinion respecting the interpretation of the act of May 28, 1908, as to the disposition of coal lands in Alaska, and that that was the occasion upon which he first learned that Mr. Glavis had had an interview with the Attorney-General on the subject. On the following day he prepared an answer to Mr. Moore's letter and, with the correspondence from Moore and the papers prepared to submit to the Attorney-General, he laid the matter before the President.

The letter transmitting the request for the Attorney-General's opinion had been tentatively signed by him.* He called the attention of the President to this fact, who advised him to have a new letter prepared to be signed by Assistant Secretary Pierce, which he did, and in that manner it was transmitted to the Attorney-General. (B., pp. 11-12.)

Later on, probably the early part of June, Clarence Cunningham called upon Secretary Ballinger with his attorney, Mr. John P. Gray, of Wallace, Idaho, and inquired about his coal claims. The Secretary immediately sent for Mr. Pierce and told Mr. Cunningham he would have nothing to do with the cases; that he had turned the entire matter over for Mr. Pierce's action and that he must confer about it with him. (B., p. 12.)

The letter prepared for transmission to the Attorney-General opens with a reference to the act of May 28, 1908, and the statement that:

At the date of the passage of this act there were pending in the various land offices in Alaska unperfected coal entries in which payment had not been made and cash certificate had not issued. (G., p. 21.)

This reference was clearly not to the "Cunningham" entries, as in those cases entries had been perfected, payments made, and cash certificates had been issued. After referring more in detail to the entries so spoken of, the draft continued:

Application is now being made from time to time that certain of the entries above referred to, and pending on March 28, 1908, be now accepted, cash price received, and entries permitted to go to patent under the terms of this act. (G., pp. 21-22.)

* Mr. Schwartz states that the draft of this letter was dictated by him in Mr. Glavis's presence, the fourth inquiry being suggested by Glavis. (S., p. 30.)

For the reasons above stated this could not have referred to the Cunningham entries. The first and fourth questions formulated for the Attorney-General referred to agreements "made prior to the initiation of the entry." In the opinion of Assistant Secretary Pierce, dated May 19, 1909, prepared with respect to this matter, the statement is first made that—

* * * the act of May 28, 1908, was a curative act and should be liberally construed so as to further the object intended to be advanced by said legislation, namely, the consolidation of coal claims in Alaska, initiated prior to November 12, 1906, through means of associations or corporations, so as to permit of the acquirement of title to contiguous locations, not exceeding 2,560 acres. (P., p. 93.)

Some confusion would naturally arise in the interpretation of both of these documents from the use of the words "initiation of the entry." The term "entry," as used in reference to public lands, means, in its technical sense, the filing with the register of the Land Office of a claim to a portion of the public lands for the purpose of acquiring an inchoate right thereto. The "initiation of the entry" would, therefore, be the presentation for filing of the declaratory statement of location and claim required by section 2349 of the Revised Statutes. But, in a popular sense, the term is sometimes loosely applied to various proceedings under the land laws, and the courts also have used it as importing the physical act of entering and settling upon land. (See Am. & Eng. Ency. of Law, Tit. Public Lands, p. 806.) The act of 1908 permits the consolidation by persons who have in good faith, etc., "*made locations* of coal lands in the Territory of Alaska," etc. The phrase "initiation of the entry," is obviously used in these two papers to indicate action taken *after* the location was made, by filing the papers constituting an entry in the office of the register and receiver. Bearing in mind that but few claims had proceeded to entry, payment, and the issue of certificates, there is no inconsistency between the view of the statute taken by the Attorney-General and that expressed by Assistant Secretary Pierce in the following language:

It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely that technical objection might have been raised as to the good faith of the claimant or entryman because of the understanding, arrangement, or agreement contemplated or entered into with respect to the completion of such entries, prior to the passage of the act of May 28, 1908. (P., p. 94.)

If, as would therefore appear, the assistant secretary was dealing with the effect of arrangements or agreements made *after* location and *before* the perfecting of the entry, then his opinion does not differ

with that of the Attorney-General, rendered June 12, 1909, in which opinion the conclusion is reached that:

if the agreements or arrangements mentioned in your letter were entered into by locators of coal lands in Alaska after they had made their locations in good faith and in their own interest alone, such locations may, under the provisions of the act of May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act. On the other hand, I am of the opinion that, if such agreements or arrangements were entered into prior to such locations being made, such locations do not come within the provisions of said act and can not be lawfully passed to entry and patent. (P., p. 112-113.)

Mr. Pierce states that the letter of May 19, 1909, was prepared by Mr. Finney and Mr. Clements, who was acting as Assistant Attorney-General in the absence of Mr. Oscar Lawler, and was presented to him for adoption and signature in the regular course of business. He took down the statutes, read them over, examined the opinion, stated that it seemed to him the opinion was sound, and then signed it. (P., pp. 21-22.) Mr. Finney's memorandum, submitted with the Assistant Secretary's statement, states that—

The questions propounded by the Commissioner of the General Land Office in paper submitted May —, 1909, were all understood to relate to arrangements or agreements made *after* location and having reference to the completion or perfection of the entry. (P., pp. 31-33.)

The Attorney-General's opinion was rendered June 12, 1909.

GLAVIS'S PROCEEDINGS AFTER MAY, 1909.

Mr. Glavis states that—

By telegram, dated June 29, 1909, I was advised that the claimants of the Cunningham group had elected to stand under the old law and would not attempt to come under the provisions of the act of May 28, 1908, and that immediate hearings would follow.

By telegram of the same date I replied as follows:

"Referring to your telegram of 29th respectfully recommend that Agent Jones be directed to remain here on coal cases. His evidence and knowledge Cunningham group very important. Answer by wire quick."

My request was denied. (P. 25.)

Agent Jones, whose evidence and knowledge of the Cunningham group Glavis here states to be important, is the same person whom he referred to in his report of March 21, 1909, in the following language:

In the course of this investigation many affidavits were secured, but owing to Mr. Jones's unfamiliarity with the Alaska coal-land laws he was only partially successful in securing evidence showing the true situation. (Glavis, p. 16.)

Although on April 20, 1909, he telegraphed to Mr. Schwartz:

To complete Alaska cases in two months, Jones and four more agents necessary. * * * (Glavis, p. 20.)

Mr. Schwartz says:

There are 33 entries in the Cunningham cases, covering an area of land about 2 by 4 miles; the entrymen are well known. As indicated in my official correspondence heretofore quoted, and as I shall show you later, at least as early as March, 1909, evidence was in our possession warranting us in proceeding, which evidence will, I am confident, result in cancellation of the claims.

Mr. Glavis would have you believe otherwise, and also that, because certain of the claimants were prominent citizens of Washington (State) and friends of Judge Ballinger, there was ground for apprehension that full justice would not be done to the Government in the premises. If this apprehension was real and well founded, the inquiry naturally presents itself as to why he did not, when offered all the men and money for pursuing the investigation which he might require, proceed diligently toward securing and marshaling the facts for presentation against the claims instead of constantly and consistently declining proffered assistance which would have enabled him to accomplish that end. His case is and for a long time has been complete, but it now appears that he has been obsessed with a delusion regarding the integrity of his superiors and fearful on that account that the issue may go against the Government and he in some way be to blame.

* * * He had now been investigating Alaska coal cases for two years, barring the short period when he was compelled to use all his men in the urgent Oregon work. His 73 reports of March and April—called for by my wire of March 10—showed he had dipped into many cases and completed none to his own satisfaction.

With that situation confronting the office, the wire of April 20, 1909, was sent him. It reads: "Alaska coal investigation must be completed within sixty days. What number additional agents do you require? Answer by wire." (S., pp. 38-39.)

Mr. Schwartz further states that immediately upon receipt of Glavis's message, asking for Jones and four more agents, he began sending him additional agents. (S., p. 39.) That on June 5 he left for a field trip through the public-land States. Prior to returning he wired Glavis that he would meet him at Seattle about June 20, which he did, and they consulted generally as to Alaska coal cases. Glavis advised him that he would be able to submit reports on July 1, but that he desired to make field examinations of the land itself in Alaska in some of the cases. (S. Rec., 192.)

It was agreed between himself and myself that he would send Mr. Kennedy and Mr. Stoner to Alaska early in July. In order to complete his reports by July 1, he wanted Special Agents Jones and Spaulding from Portland. I wired for these men to go to Seattle to assist Mr. Glavis. He also wanted his old clerk, Miss Patten, to be transferred to Seattle for permanent duty, and I advised him, as the office had theretofore advised the several Congressmen who had

written us at Glavis's suggestion after Glavis had been told she must remain at Portland, that Miss Patten's services were necessary in Portland because of her familiarity with the records in the Oregon division.

I gathered from Glavis's attitude that it was his opinion the Government would patent the Cunningham cases if they went to a hearing.

June 29, Acting Secretary Pierce directed that "action upon the Alaskan coal entries be had at the earliest practicable date," and his further directions appear in the record. He also wired Mr. Glavis to that effect. (S. Rec., p. 192.)

On June 29, 1909, Mr. Schwartz wired Glavis:

Cunningham group elect to stand on old law. Immediate hearing will follow. Be prepared with your evidence. (S. Rec., p. 193.)

In reply Glavis wired to Schwartz:

Is it necessary to submit report on Cunningham group?

Schwartz replied on June 30:

Yes; submit Cunningham report. Notice of charges will be prepared here. You may suggest form in your report, if you desire. (S. Rec., pp. 193-194.)

Mr. Schwartz says (S., p. 43) that in his conference with Glavis in Seattle in June, 1909, he (Glavis) talked particularly about the Cunningham case. Among other things he wanted a good lawyer to aid in the trial of the case. Schwartz says he told him he would probably send Special Agent James M. Sheridan, who had had great experience in Colorado coal-conspiracy cases and who had demonstrated high capacity. He advised Glavis that the department wanted to try the Cunningham case as soon as it was prepared to go to trial. Mr. Schwartz says:

Mr. Glavis stated that he wished to interview a number of persons in Spokane and make field investigations in Alaska before concluding his investigation and making final report. He agreed to make a full report by July 1 as to all matters except the result of the field investigation. The question of proceeding or not proceeding to trial prior to the completion of the field investigation was not discussed. Mr. Glavis also wanted Mr. Jones to come up from Portland to aid in office work in drawing reports.

Mr. Schwartz says:

While Jones is a fair agent, I do not understand that he is particularly adept in such office work. However, I was interested in pushing the field work and advised Mr. Glavis that I would wire for Mr. Jones to come up to Seattle. On the way to the telegraph office Mr. Glavis stated further that Mr. Spaulding would be of assistance to him. Mr. Spaulding was a stenographer in addition to an agent, and so I directed both Jones and Spaulding to come to Seattle. At that time it was my expectation we would make a field investigation. It was agreed the men would proceed north on July 16, 1909. However, the one single thing of importance and which field investigation would

disclose was the precise location, direction, and size of the tunnel. (S., p. 44.)

Referring to Glavis's report of April 27, 1909, Schwartz (S., p. 41):

It was not until June 29 that the office directed him to prepare a trial; and not until July 17 that my wire advised him the taking of testimony would begin before return of Coal Expert Kennedy from Alaska. Here was an additional forty days where might well complete any investigation outside of Alaska.

May 17 Mr. Glavis arrived in Washington and I again offered him more agents, and he again refused them. He advised me all inquiries and investigations would be concluded before the next days, and recalled that he had very little other work in his division.

Mr. Glavis's work sheet for the month of April, 1909, showed out of the thirty-five or thirty-six thousand cases then pending in the field divisions, he had within his jurisdiction but 1,546, of which 926 were coal, and of the coal cases all but about 40 were declaratory statements and not entries. [Exhibit 17.]

April 24, 1909, Special Agent Gery was sent to Glavis at Seattle.

May 3, 1909 (Metzger having wired Glavis was not at Seattle) the following wire was sent to Special Agent Metzger:

"Report to Christensen for temporary duty until Glavis's return to Seattle." Metzger is now in Alaska on timber work.

May 8, 1909, Special Agent Kester was ordered to Glavis at Seattle. Kester was sent to Portland June 29.

May 13, 1909, George A. Parks, a mining engineer experienced in coal, was sent to Glavis.

May 10, 1909, A. R. Bowman—appointed as timber cruiser and who is also No. 1 on civil service lists as land-law clerk—was sent to Glavis.

June 3, 1909, Harry P. Kennedy (not the coal engineer) was appointed as timber cruiser and sent to Glavis.

June 18 or 19, 1909, I ordered Special Agents Jones and Spaulding to Seattle temporarily.

July 16, 1909, Special Agent Herbert S. Foreman was sent to Glavis at Seattle.

July 21, 1909, Spaulding was assigned to Portland permanently.

* * * * *

So also he had Special Agent Stoner, Engineer Kennedy, Practical Miner Doyle (until recently called to Montana); and he was temporarily employing two coal men for duty in Washington—these were authorized in April when he refused Agents Booth and Hedrick, claiming he had no work for them.

He could have had any number of agents, and the record demonstrates he refused them. (S., pp. 42-43.)

Assistant Secretary Pierce in his statement tells of his interview with ex-Governor Moore, who had complained bitterly that the Government was not treating him and the other Cunningham entrants right; that no specific charges had been filed or served upon them; that the Government had had the money—over \$50,000—for

two years; and was conducting no steps looking to the final disposition of the claims. Mr. Pierce repeated to Mr. Moore that no patents could be issued upon the record as it stood. Moore asked what could be done. Mr. Pierce told him that he would direct formal charges to be prepared and filed and served and a speedy trial of the issues if, upon examination of the formal charges, he decided that they wished a hearing; that if they did not wish a hearing when the charges were served upon them, the entries would be canceled as a matter of course.

I told him that it was the policy of the present Secretary to have all suspended entries in the United States, wherever situated, speedily tried and determined, and that he could have an early trial in these cases. (P. 12.)

At the close of this interview, Mr. Pierce says:

* * * I directed Mr. Finney to go to the General Land Office and tell the Commissioner that I had promised Mr. Moore a speedy trial, to have the General Land Office direct Mr. Glavis to report the facts in his possession, and prepare formal charges and get ready for as speedy trial of the charges as would be consistent to the protection of the Government's interest. Mr. Finney tells me that he delivered my message that same day to Commissioner Dennett; at any rate, Mr. Finney returned the same day to my office and stated to me that he had delivered my instructions. (P., pp. 14-15.)

In answer to Glavis's telegram of June 29, recommending that Agent Jones be directed to remain with him on the coal cases, Mr. Schwartz sent him a telegram, dated June 30, 1909, which Glavis does not refer to in his statement, saying:

Send Jones to Portland this week in accordance with our understanding. When Cunningham or other group is set for trial you may subpoena him. Please discontinue efforts to secure agents and employees from Portland. (S. Rec., pp. 196-197.)

On June 29, 1909, Mr. Pierce wrote to the Commissioner of the General Land Office, as follows:

It is the desire of this department and, presumably, of all parties in interest that action upon the Alaskan coal entries embraced in what is known as the Cunningham group, be had at the earliest practicable date. Chief of Field Division Glavis is to submit his recommendations to your office as soon as possible, and in view of the fact that, so far as known, all of the witnesses whose testimony will be taken, in the event that hearings are ordered in the cases or in any of them, reside in the United States, I have to direct that you instruct the Chief of Field Division, if hearings be ordered, to endeavor to secure from the defendants stipulations for the taking of the evidence before qualified officers, to be designated by the Commissioner of the General Land Office, at or near the residences of the respective witnesses, the stipulation also to contain the provision that the evidence, when taken, shall be forwarded by such officers directly to the Commissioner of the General Land Office, the record to be considered by him when made up, without reference to the local land office in

Alaska. This will effect a very material saving of time, and I am believed that the defendants will be glad to consent thereto. (S., p. 196.)

Mr. Schwartz says that this order was given for the reason that all parties were in the United States and the plan proposed was to effect a saving of time. (S., 47.) That with regard to Glavis's knowledge for Jones, the extent of Jones's knowledge of the Cunningham case has already been indicated, and was shown by the previous testimony of Glavis himself, and it was not thought that his knowledge had materially increased during the preceding twelve days that he had been in Seattle making office reports. His evidence, of course, could not be used until the taking of evidence had begun. Also, it was the force of Chief of Field Division Christensen at Portland that he had cases equally as important as Mr. Glavis, by bringing up Spaulding and Spaulding to Seattle. He therefore sent the telegram on June 30, above quoted. That he had previously advised Mr. Glavis personally and by letter that Mr. Jones was needed in Oregon. (S., 47.) June 30, 1909, Glavis telegraphed as stated in his statement.

Valuable evidence Alaska coal cases still being secured. As the phases develop as investigation progresses. Can not consider making final reports while further evidence is available. Cunningham group included. This should be extended at least sixty days.

Mr. Schwartz says:

It was my conclusion, as I have above stated, that Mr. Glavis was over-cautious, and I knew from my twelve years' actual experience in the field investigating cases of this character that there was no necessity for investigations to be strung out indefinitely, and that with the force of men and the large funds available, these investigations could be completed without this additional delay. I also knew that future events during the course of the year will demonstrate that the very large majority of these Alaska groups, if permitted to go to hearing, will default or, at best, make a very weak defense.

* * * I was convinced that Mr. Glavis was simply job-shifting, although I did not, at that time, doubt his integrity. In the light of mind, and appreciating that I was responsible for the results closed by any record in which I took action, and knowing that it was the desire of the department to speedily bring these, as well as all other pending cases, to a hearing, I wired to Mr. Glavis immediately after securing his wire:

"Reports must be submitted at once as per instructions and department. You may, of course, continue investigations. Reports wanted now. Will send man to Seattle to take charge of investigations and conduct cases in near future; meantime continue investigations."

The agreement referred to was that had between Glavis and Jones at Seattle, in which he stated that, with the aid of Jones and Spaulding, he could get out all the reports. He had completed his

tigations, except in those cases where entrymen were in Alaska, and the field investigations in each case in which it might be found necessary.

My reference to sending a man to Seattle was for the double purpose of indicating to him that the case must proceed and that he would have competent legal assistance as per our agreement.

July 6, 1909, I directed the law examiners in charge of these matters to advise the attorneys in the Cunningham group that we were prepared to proceed to a hearing, and that stipulations in accordance with the department's above quoted letter of June 29 might be entered into. (S. Rec., p. 197.) On the same day I notified Mr. Glavis and asked him to wire the names of the different towns or cities in which he desired to take testimony, to which he replied:

"Testimony must be taken at Seattle, Spokane, Walla Walla, Oakesdale, Rockford, in Washington; Wallace, Moscow, in Idaho; Cleveland, Elyria, in Ohio; New York City and Los Angeles. Government's case would be much strengthened by awaiting result of investigations in Alaska." (S., pp. 48-49.)

On July 16, 1909, Schwartz telegraphed Glavis as follows:

Please wire towns or cities *in the order in which* you wish to take testimony, Cunningham cases. Wish to arrange for bringing on the witnesses in accordance with your desire. Have directed Special Agent Sheridan, competent trial attorney and experienced in coal matters, to report to you until after testimony is completed. (S. Rec., p. 213.)

At the time of sending this telegram Mr. Schwartz states that he had not received the letter which Glavis addressed to the Commissioner of the General Land Office under date of July 8, which letter is given on pages 25 to 28 of Glavis's principal statement. (S., p. 50.)

Instead of advising Mr. Schwartz of the order in which he desired to take testimony, Glavis, as shown by his statement, showed Schwartz's telegram to Secretary Ballinger in Seattle and called his attention to his (Glavis's) telegram of July 6 and report of July 8, and told him he did not believe a hearing should be had until a field examination was made. Glavis states the Secretary said he thought the Cunningham people would stipulate that the tunnels and improvements were made with the idea of having a main tunnel for the entire group. Glavis told him that the stipulations, if any, were being handled in Washington and that he did not know what was being done. Secretary Ballinger says:

About the 16th of July Mr. Glavis called upon me in the Federal Building, in Seattle, complaining that he was being forced to a hearing in these cases prior to his being able to get certain evidence he thought necessary in Alaska, and was about to send an agent there to secure this evidence. I suggested that he wire the facts to Mr. Schwartz if he thought advisable, and secure further time. (B., p. 12.)

It appears from Glavis's statement that *on that same day* he— requested cooperation of the Forest Service, and its representatives, both at Seattle and in Washington, D. C., after having examined the records in the cases concurred in my recommendation that the field examination should be completed before the hearing should be ordered. (G., p. 29.)

On the same day, without advising his own department, Secretary Ballinger, or his chief that he had called in the aid of representatives of another department of the Government, Glavis telegraphed to the Commissioner of the General Land Office as follows:

Have conferred with Secretary Interior. He suggests I wire you and ask if my report July 8 and telegram July 6 was considered before you sent telegram this date. In view recommendation stated in report above referred to, it will be difficult to comply with your telegram unless you desire hearing proceed without further investigation. (G., p. 29.)

Mr. Schwartz says:

I believed from my own knowledge of the evidence in hand that whatever additional investigation, if any, might be yet required could well be made before the actual taking of testimony could be reached by even the most expeditious proceedings. I also believed by this time that it was necessary to put a competent person in charge of these cases who was not affected by the suspicions which filled the mind of Mr. Glavis, as disclosed to me in his statements in reference to the action taken by him upon the respective decisions of the department and the Attorney-General, and his expressed belief at Seattle that Judge Ballinger would "lose out" in the controversy which he predicted, and I concluded that the time had arrived to require the immediate attendance of Mr. Sheridan at Seattle and to give him charge of these cases, and to get his independent view as to the necessity for further delay, and, accordingly, on June 17, 1909, I wired Mr. Glavis:

"Your wire 16th in reference your consultation with secretary received. Instructions heretofore issued were made in view of your telegram 6th. Your report of the 8th not at hand. Have this day wired Sheridan as follows: 'Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agent or assistance necessary to bring case to prompt hearing and close.' You will render Sheridan every assistance, meantime continuing investigations. Case already consumed more time and expense of men than any other case pending. Investigation can not proceed indefinitely. The result of investigation in Alaska will go into record before concluding hearings." (S., pp. 51-52.)

On July 21, Mr. Schwartz sent to Mr. Sheridan instructions to proceed to Seattle, and wrote him full detailed instructions, stating that he had been placed in charge of the Cunningham group of cases for the express purpose of properly completing the investigation speedily, and thereafter to conduct the hearings upon which the Government would endeavor to cancel the claims; that he was

advised, as Mr. Glavis had been previously advised, that he might call upon Schwartz for whatever assistance, to the extent of the funds and the field force, as he might require. (S., p. 52.)

It is my opinion, however, that Mr. Glavis and his agents have curried this group of cases thoroughly, but as to that I defer to the opinion of yourself after you shall have gone through the record and conferred with Mr. Glavis. * * * I am unable to agree with Mr. Glavis's letter of July 8 that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence in the question of good faith and bona fides of the entrymen. * * * (S., 52.)

On the same day Schwartz wired chief of field division at Denver, Colo., to send two good men with Sheridan to work on coal conspiracy. (S., 53.)

It will be noted that in Glavis's report of July 8 he says:

Since the submission of my report of March 23 there has been no evidence secured in this group of entries for the reason that the time allowed within which to make these investigations has been too short to complete the same, for the reason that there are one thousand claimants involved in this investigation residing in all sections of the United States, parts of Canada, and Alaska. (G., 26.)

This statement is in direct conflict with the statements in Glavis's letter to Chief of Field Service Schwartz, dated April 27, 1909 (attached as Exhibit 9 to his own statement), and his telegram of June 30 to Commissioner Dennett quoted by him on the preceding page, as well as with his statements made to Mr. Schwartz above quoted. The statement "for the reason that there are 1,000 claimants," etc., is obviously irrelevant because it does not bear upon the Cunningham claim. Here, as in a number of other cases, Mr. Glavis, with apparent intention, confuses the general coal claims pending in Alaska, and the investigation into the bona fides of the entire nine hundred odd locations, with this particular group of Cunningham claims, as an excuse for not having made the progress required of him by the General Land Office.

On July 1, 1909, Commissioner Dennett says he left Washington for the West. Just prior to his departure he states Mr. Schwartz showed him a telegram from Glavis urging longer delay, and Schwartz expressed the opinion that Glavis was not showing due diligence in these cases. That his trip West was for the purpose of seeing that the different divisions in the field used every safe means for bringing to a speedy determination many of the vexatious cases that had been pending for so long a time; this in obedience to the terms of the appropriation giving \$1,000,000 to bring up to date old work in the field. Mr. Dennett says:

On or about July 19, 1909, I arrived in Seattle and saw Mr. Glavis. Mr. Glavis, after some preliminary conversation, informed me that he

had been superseded by Mr. Sheridan in the Cunningham cases. I was not surprised at this step because of the known feeling that Mr. Glavis had not been as active as necessary. * * * During a conversation Mr. Glavis told me that he had called in the assistance of the Forestry Bureau, inasmuch as certain of these claims were on the Chugach Forest Reserve, and that he had requested their assistance in the postponement of the cases. I told him that I regretted this step, inasmuch as it had appeared to me to be calling in another bureau in criticism of our conduct of a case, especially of a bureau which had during the past two years attempted to usurp so much of the jurisdiction of the General Land Office. I further stated that it would have been better conduct on his part had he waited until I had appeared on the scene, he being fully aware of my expected trip to the West. I was somewhat outspoken in my criticism, reminding Mr. Glavis that during the last two years it had been my great aim to build up a first-class special-agent force, and that I had on every occasion defended them and guarded their interests as against the encroachment of the Forestry Bureau. * * * (D., pp. 36-37.)

On July 22, 1909, Mr. Dennett wired Secretary Ballinger:

Advise telegraphing Schwartz authorizing him to delay issuing notice in important cases subject our talk here until Sheridan can examine evidence obtained.

Secretary Ballinger states that he replied to Mr. Dennett as follows:

Considering my personal reluctance to direct proceedings in Alaska coal cases, you should make necessary directions to Schwartz. (12½.)

INTERVENTION OF THE FORESTRY BUREAU.

On July 23 Mr. Dennett wrote to the Secretary, referring to the telegram and saying:

The situation is as follows: Twenty-one claims are on the forest reserve; Glavis has so advised the Forester and he has joined him in moving for a delay until Kennedy can return from Alaska with report of the field investigation. Glavis seems to expect a show-up upon the field which would indicate that all developments have been done with the evident purpose of advancing a single interest. I also desire to find out in what manner the employees were paid a salary in information of this kind. Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained.

I have no recollection that the matter of field investigation was taken up with me, although I am not certain on this point. Schwartz telegraphs me that the Agricultural Department has requested the postponement, and under all the circumstances I will recommend that their request be acquiesced in. (B., 13.)

Secretary Ballinger states he did not reply to this letter, but wrote to Mr. Schwartz as follows:

The commissioner also advises me regarding the action of Chief of Field Division Glavis respecting the hearing on Alaska coal cases.

As I have heretofore declined to make any direction regarding the disposition of these cases on account of having advised some of the parties in reference thereto prior to my appointment as Secretary, I do not wish in any way to be drawn into the matter and have so advised Mr. Dennett. What I have insisted on in this connection was that the Alaska coal cases be taken up and a prompt disposition be made of them by the department, as they have been hanging fire for several years. I advised Mr. Dennett, in general, in Seattle as to this phase of the matter. Immediately on his return I wish you would take this subject up with him. It will probably be necessary to appeal to Congress for additional legislation before this matter can be entirely cleaned up. (B., p. 12.)

Mr. Pierce states that on July 21, 1909, Mr. A. C. Shaw, assistant law officer of the Forest Service, called at his office and told him that part of the Cunningham claims were in a forest reserve and that the Forestry Bureau wanted to be heard in the cases, and asked for a postponement of them until November. Mr. Pierce told him that he had promised Governor Moore a speedy trial of those cases, and he would like the Forestry Bureau to cooperate with the Land Office to that end. Mr. Shaw asked to see the records, and Mr. Pierce referred him to the General Land Office. As above stated, these files had been put in the possession of Law Examiner Murphy with instructions not to show them to anyone without the order of Mr. Schwartz. There was some little delay before this permission was received (S., 53-54), and then the files were handed to the representative of the Forestry Bureau. (S., 54.) Part of the lands in which the Cunningham claims are located are within the Chugach National Forest, created by proclamation of the President on July 23, 1907. This proclamation contains the following clause:

And further *excepting* from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry of filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: *Provided*, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the national forest hereby established which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawn; and provided that these exceptions shall not apply to any land embraced in any selection, entry, or filing which may have been permitted to remain of record subject to the creation of a permanent reservation. (P., 34.)

By executive order, dated July 2, 1908, the Chugach National Forest and the Afognak Forest and Fish Culture Reserve were consolidated under the name of the "Chugach National Forest." The forest was also enlarged by proclamation of President Roosevelt dated February 23, 1909. Mr. Pierce states:

All 33 of these Cunningham locations were made long before the forest reserve was created, and 30 of them were entered and paid for after due notice, without protest or objection from anybody before the forest reserve was created,

and they were, therefore, by the terms of the proclamation, excepted from its effect and left within the jurisdiction of the Land Office.

A day or two after the visit of Mr. Shaw there was received by the Assistant Secretary a letter from the Secretary of Agriculture dated July 21, 1909, of which the following is a copy:

The Honorable the SECRETARY OF THE INTERIOR.

SIR: I have received a telegram from the district forester at Portland, Oreg., requesting that date of contemplated hearings to involve the 32 coal claims of the Cunningham group in the Juneau, Alaska, land district be not held before November 1. The district forester says in his telegram that he had written to the chief of field division at Seattle, Wash., and requested that such hearings be not held before the date mentioned. The forester has telegraphed to the district forester a request that he report by telegram the reasons for not postponing the hearings before such date.

These cases involve Juneau, Alaska, coal-land surveys 44, etc., and land in the Chugach National Forest, and the file number in the General Land Office is 36996.

I have learned informally at the General Land Office that a date looking to an early hearing is contemplated in your department.

I respectfully recommend that the date of such hearings be fixed until the telegram is received from the district forester giving the reasons for his request.

(Signed)

JAMES WILSON,
Secretary

(P., pp. 35-36.)

On July 27 another letter, dated the 24th July, was received at the Interior Department from the Secretary of Agriculture, as follows:

* The telegraphic report from the district forester at Portland, Oreg., regarding the Cunningham group of coal claims in Alaska, mentioned in my letter to you of July 21 as having been called for, is received. The district forester reports that he has not yet had opportunity to have these claims examined upon the ground. He further reports that four coal claims of the Cunningham group, which can not yet be designated specifically, do not contain workable coal. They should not pass to patent for that reason. The district forester recommends that an examination of the ground embraced in the coal claims of the group be made to determine whether they contain workable coal. He also reports that he will send a coal expert to

senting the Forest Service to assist the experts of the land office in the examination of coal claims of this group in the national forest.

Until the results of this examination are available, it will not be possible for this department to present the facts. The question at issue in these cases is of such importance to the people of the Pacific coast; and the difficulties in the presentation of the Government's testimony are of such a nature, as to make the fullest preparation essential. Accordingly, I have the honor to request that the date for the hearing contemplated in these cases be not fixed until the examination of the ground is concluded and its results are available.' (P., p. 36.)

On July 26, 1909, Mr. Schwartz wrote to the acting secretary, stating that, under date of July 23, he was in receipt of a telegram from Mr. Dennett advising him that he was authorized to recommend to the acting secretary to acquiesce in the request of the Forestry not to set cases for hearing immediately.

This [wrote Mr. Schwartz] refers to the Cunningham group, and is probably predicated upon the fact that Coal Mining Engineer Kennedy is in Alaska making examination of the ground for the purpose of determining any material facts which may be ascertained by such physical examination; and the further fact that Attorney Sheridan, who for the past year has been engaged exclusively in the trial of coal-land cases—particularly conspiracy cases—for the General Land Office, has been heretofore designated to conduct this case, and is now under orders to proceed to Seattle. It will require some little time for him to familiarize himself with the facts. I do not understand, however, that it is the intention of the commissioner that we shall arbitrarily postpone the trial of these cases until next November; but that they shall proceed the same as other cases as soon as the General Land Office has the evidence in hand, and is prepared to go on.

It is my opinion that we have the evidence in hand; that we are prepared to go on; and that such additional details of evidence as may be required would, in the ordinary course, be in hand before the present contemplated proceedings could reach the stage of the actual taking of testimony. However, I defer, of course, to the suggestion of the commissioner. (P., p. 37.)

The telegram of Commissioner Dennett to Mr. Schwartz, referred to in this letter, read:

Secretary desires to refrain from any action in proceedings in Alaska coal cases. I authorize you to recommend to Acting Secretary Pierce to acquiesce in request of forestry not to set cases for hearing immediately.—DENNETT, *Commr.*

(P., 37.)

On July 29 Assistant Secretary Pierce replied to the Secretary of Agriculture as follows:

Replying to your letters of July 21 and 24, 1909, requesting delay in holding hearings involving coal land entries in the Cunningham group, Juneau, Alaska, land district, I have to advise you that this

department will gladly cooperate with your department in obtaining the material facts with reference to these claims and will take action when the reports are received. However, these entries have now been suspended for three years, and it is important that early action be had relative thereto, not only because of the present interests of the claimants, but of the vital importance, both to the people of Alaska and to the Government, that some portion of the Alaska coal deposits be available for use.

I have therefore to request that the Forest Service be directed to expedite in every possible manner whatever investigation it may desire to make, and to file its findings at the earliest possible moment. (P., p. 38.)

On July 21, after application had been made by Mr. Shaw, of the Forestry Service, to the Land Office for papers in these cases, Mr. Schwartz wired Commissioner Dennett at Seattle as follows:

Department has letter from Secretary of Agriculture, originally in Forest Service, asking postponement of the Cunningham hearing until November. Shaw says Glavis wrote or wired him recent matter. Require Glavis to show you copy his letter to Secretary, being necessary to determine motive behind Agriculture's request for such long delay. Sheridan leaves to-morrow for Seattle with assistants. (S. Rec., 232.)

He also sent a further personal telegram to Mr. Dennett, as follows:

I suggest Ballinger wire me not to fix date of hearing or charges until Sheridan completes investigation of examining evidence and makes any further investigations he may deem advisable. Forest Supervisor Allen, Portland, asked for protest against hearing upon suggestion of Glavis. My opinion present evidence abundantly sufficient to show whole transaction, but immediate action might be used by Forester for political effect. (S., 56.)

The above telegram [says Mr. Schwartz] shows very accurately what I believed the department was confronted with on the afternoon of July 21, 1909, and explains that which is on pages 31 and 32 of Mr. Glavis's statement to you (as, indeed, Glavis intended it should be) a reflection on Secretary Ballinger—the necessary inference being as the inspired newspaper articles have stated, that Judge Ballinger was keeping in close touch with the Cunningham cases. Mr. Ballinger and Mr. Dennett were out of the city. I was of the opinion that the intervention of the Forest Service was for the purpose of creating a record upon which a newspaper attack would at once be framed up against the Secretary, and it was my thought, arriving probably too hurriedly, that inasmuch as Dennett and Ballinger were both in Seattle, and Glavis had presented the matter to the Secretary, that Mr. Ballinger should himself direct the postponement of the cases. This was purely a matter of policy. (S., 56.)

As above stated, upon receipt of Secretary Ballinger's telegram suggesting that Mr. Dennett should give the necessary directions, Mr. Schwartz, Dennett telegraphed:

Secretary desires to refrain from any action in proceeding with Alaska coal cases. I authorize you to recommend to Acting

tary Pierce to acquiesce in request of Forestry not to set cases for hearing immediately. (S., p. 58; G., p. 32.)

At the same time, in answer to his personal telegram, above quoted, Mr. Dennett wired Schwartz:

November evidently suggested from Glavis, who desires report field examination before trial. If assistants for Sheridan not started stop them and let Sheridan come alone for the present. (G., p. 32.)

On July 24 Mr. Sheridan arrived at Seattle, and on July 27 he wrote a report to Mr. Schwartz as a result of his study of the Cunningham cases. His report analyses the affidavits in Mr. Glavis's possession; says that they all show a practically uniform concurrence in the statement made by Mr. Cunningham in his affidavit, to the following effect:

We have an understanding that when the patents have been secured we would form a company for the development of the coal fields, but none of the claims were taken up for the benefit of a corporation, but merely with the idea when titles were secured we would combine our claims and work the coal field for ourselves. (S. Rec., 287.)

This, Mr. Sheridan points out, is plainly illegal. He shows that there was some contradictory affidavits which make it apparent that there would be an entire change of front from what was originally set out in the first Cunningham affidavit, which would give an entire conflict and leave the case, as regards the record evidence, in a very jumbled condition. Second, he says that with respect to the government witnesses, Special Agents Stoner and Kennedy were absent in Alaska at present:

* * * and from what I learn from Mr. Glavis, their instructions were not such as necessarily to have them complete the examination of the Cunningham group before considering several other groups under investigation there also; hence it is not at present known whether or not they would be of any use if immediately called, as it may well be, but they have spent their time examining other than the Cunningham group to date. * * * Timber Expert Ames, of the Forestry Department, I am informed, is now in Alaska and on his way to the Cunningham group. Now, inasmuch as 4 of the 33 entries in this Cunningham group were taken up for their timber rather than their coal values—for it is conceded by the parties interested that they are not valuable as coal lands—the condition of these 4 entries as regards their timber would be a material piece of evidence, for it appears from the record evidence now in the possession of Mr. Glavis that the entrymen who took up these 4 entries have been similarly assessed with those who took up the coal entries. (S. Rec., 288.)

After reviewing the probable plan of the defense, Mr. Sheridan says:

I feel that it is only safe and consistent to have an exhibit at the hearing setting out developments, improvements, and timber condi-

tions on this group before proceeding. This is my very best ment on the matter; and in view of the importance of winning the first Alaska case—for I am convinced that the Government's case will prevail in it—I do not care to recommend an immediate hearing which would then entirely disappoint you in the result.

Mr. Glavis [he says] suggests that the hearing be set for about the 15th of October. He and I are agreed that it will be promptly held when we have this field evidence from Alaska at hand. *

There is no additional record evidence to be obtained at present as far as we know, and hence it would be unnecessary to keep Special Agents Smith and Phillips here for that purpose. (S. Rec. 238-242.)

It will be observed that the reasons given by Mr. Sheridan for postponing a field examination before proceeding to hearing differ entirely from those set forth by Mr. Glavis in his report of July 8. In his report he said:

The necessity for such field examinations, showing that the entries have been worked with a view to the consolidation thereof, and the mining and marketing of the coal for the benefit of the claimants, with the intention to form a company, is perfectly apparent to all etc.

While Mr. Sheridan points out that inasmuch as 4 out of 10 entries were taken up for timber rather than coal values, the conclusion of these 4 entries as regards their timber would be a material part of the evidence, and that it was therefore desirable to establish the condition of these four entries as regards their timber. Further, he says:

* * * from what I can learn from the record evidence in the possession of Mr. Glavis, and which is supported by his own personal opinion of the situation, it appears that nearly all of the money expended was on one general tunnel, which necessarily would benefit only the entry upon which it is constructed, and, perhaps, a few adjoining entries. It will be apparent to all from this situation that a map of the actual conditions on the ground as regards development and timber is essential to establish the Government's contention. From the record evidence it appears that Mr. Cunningham will contend that thirty-odd openings have been made on these entries, his aim being to show that they are individual and independent concerns. Now, as a matter of fact, the map made on the grounds shows this not to be the case, and the development properly so called was upon one main tunnel. You will realize how strong will be the Government's case and how easy a matter it will be to defeat these entries. (S. Rec., pp. 238-239.)

Mr. Sheridan in his letter is speaking of the "record composed of the books and affidavits on the one hand" and of the "field examination" on the other, and the list above quoted shows that the investigations in the Cunningham cases were in fact complete so far as interviewing the entrymen in the United States was concerned, and that there remained nothing to be done except the examination of

land itself. On August 3, 1909, Mr. Schwartz wrote directing Sheridan to continue in charge of the case and to bring it to such a state of completion as would enable the Government to properly present all the facts; that in the meantime the General Land Office would arrange for a stipulation between the Government and the Cunningham group for the taking of testimony before a commissioner and for the consolidation of all the claims, as to which matter he requested a reply to his telegram of July 16, to Glavis requesting the names of the towns and the order in which it was desired on the part of the Government to take the testimony, which telegram Mr. Glavis neglected to answer.

On July 28 Mr. Sheridan reported that he was informed by Mr. Glavis that specific instructions were given to the men then in Alaska to have Cunningham case completed before their return that summer; also, that he did not need Mr. Phillips either on Cunningham or other coal cases under investigation there. (S. Rec., pp. 250-251.) Detailed instructions were wired by Mr. Schwartz to Mr. Sheridan on August 17 to proceed with the case. (S. Rec., 252.)

Glavis's summary concludes with the following paragraphs:

Within the last month repeated efforts have been made to force the Cunningham group of claims to a hearing despite a showing by Glavis that further evidence is obtainable and necessary.

As a last resort Glavis called on the Forest Service to assist in securing postponement, * * *. Mr. Ballinger, while not appearing in writing officially, has been keeping in close touch with the cases by conferences with Commissioner Dennett, and during the past month Commissioner Dennett has been trying to force hearings and has in various ways shown his sympathy with the coal claimants. * * *. Under directions from Assistant Secretary Pierce, the General Land Office requested the claimants of the Cunningham group to sign stipulations to eliminate action or consideration of the case by the Juneau office and has provided for a decision by the Commissioner of the first instance, contrary to the rules and regulations prescribed for practice in the Department of the Interior and contrary to any known precedent. (G., pp. 3-4.)

The facts above narrated show, and the statement of Mr. Schwartz gives more in detail, the facts concerning the effort to bring these cases to trial. Mr. Schwartz states fully the reasons therefor. He says that:

With a case of the magnitude of the Cunningham claims already worked up and ready for trial, there was no occasion to call in the Forestry Bureau. I confess to a degree of pride in the work of my office. He knew, for reasons already indicated, * * * that to call for the assistance of Mr. A. C. Shaw of the Forest Service, at Washington, D. C., after I had assured him of legal assistance, would be distasteful to me. Also, he knew my disagreement would rest solely upon a desire to retain the credit for victory, the fruits of our own labor in work devolving on us by the laws of Congress. (S., p. 62.)

With respect to Glavis's statement that further evidence was obtainable and necessary, Mr. Schwartz sets forth in his statement detail the evidence in the Government's hands and gives reasons why, in his opinion, the case could have proceeded to hearing. (S., 65-78.) While Mr. Schwartz deferred to the opinion of Mr. Sheridan, an impartial consideration of his views in the foregoing statement and of Mr. Sheridan's letter will indicate that, to say the least, the General Land Office had abundant reason to feel justified in proceeding to hearing at the date originally fixed without delay until the field examination in Alaska should be completed. With respect to the stipulation to eliminate action or consideration of the case by the Juneau office, Assistant Secretary Pierce says that such elimination is not contrary to any known precedent. On the contrary, he says, it is quite common for the Commissioner, under supervision of the Secretary, to direct important matters and important cases to be acted on in the first instance by the General Land Office and to eliminate the local office. Primary jurisdiction under the law rests in the Commissioner, subject to the supervisory control of the Secretary. (P., p. 40.)

Commissioner Dennett says that under the act of January 1903, the compulsory attendance of witnesses is limited to some point in the county in which they reside. It would be, therefore, impossible to secure the attendance of all the necessary witnesses at Juneau even if such a proceeding had been desired. The facilities at Juneau are necessarily limited.

It has always been the practice, therefore, to have authority issued to commissioners, or other qualified officers, who should preside at the taking of testimony when taken at any other point than at the Land Office itself. This step of taking testimony before a commissioner was, therefore, entirely in accordance with law. The transmission of the evidence to the General Land Office, instead of sending it to the register and receiver, was evidently taken for the purpose of economy of time, and for the further fact that Juneau, being so distant, it was not deemed necessary for the attorneys in the case to proceed there for the purpose of submitting arguments, and it appeared the better course to refer the matter directly to the Commissioner, and for him to listen to the argument, if submitted. (P., p. 45.)

Referring to the statement that—

Mr. Ballinger, while not appearing in writing officially, has been keeping in close touch with the cases by conferences with Commissioner Dennett, etc.,

Secretary Ballinger says:

This statement I unequivocally deny. I have had no knowledge of the course of proceedings taken by Mr. Pierce, Mr. Dennett, or Mr. Schwartz in these cases since leaving Washington, June 24, except the statement of Glavis to me that they were not giving him time enough to get his evidence, as mentioned in my general statement, and certainly

telegraphic communications and a letter from Mr. Dennett to me, which I have given in my general statement. I have had but two conversations with Mr. Dennett since leaving Washington, and they had no bearing on the Cunningham cases further than as relates to Mr. Glavis's desire for further time and his having advised with forest officers, as covered by Mr. Dennett's letter of July 23, shown as Exhibit 15, which letter I did not answer.

I wrote from Boise, Idaho, July 25, 1909, to Mr. H. H. Schwartz, as shown in my general statement. (B., p. 19.)

COMMISSIONER DENNETT'S ATTITUDE

One further statement remains to be noted, namely, that Commissioner Dennett had been trying to force hearings and in various ways had shown his sympathy with the coal claimants. (G., p. 4.) Under date of July 26, 1909, Glavis prepared and presented to Commissioner Dennett, in person, a statement or report concerning the present status of the investigation of the Alaska coal cases, which is in Glavis's statement as Exhibit 17. In that report, after referring to a number of cases, including the Cunningham group, he said:

As I explained to you yesterday, most of the evidence in the above cases have already been secured, and it will be possible to submit final report on all of these cases prior to November 1, and on said date I shall be ready to proceed with the hearings. These cases are awaiting the result of the field investigations now being made, and by November 1 every part of this work, including the making of maps, etc., and the completion of any evidence that may be secured for those in the coal field, will be ready for final report. There is also further evidence here that must be gathered. This I can complete prior to November 1. (G. Ex. 17.)

This may be contrasted with Glavis's statement to Schwartz that he was ready to make a full report by July 1 as to all matters except the result of the field investigation, and with Mr. Sheridan's report of July 27, 1909, that—

There is no additional record evidence to be obtained at present, as far as we know, and hence it would be unnecessary to keep Special Agents Smith and Phillips here for that purpose. (S. Rec., p. 241.)

in which report it appears Mr. Glavis concurred; and with the further statement in Glavis's letter to Dennett of July 26, 1909. (G. Ex. 17.)

In order, however, to properly attend to the routine work, such as the pending hearings on other entries, field examinations, and such other routine matters requiring attention, I believe the services of an experienced special agent advisable, and as I understand Special Agent Charles O. Pollard's transfer from Portland has been recommended, I respectfully suggest that he be assigned here, since he has had much experience in the handling of all kinds of cases, and would also be very useful when the testimony in the coal cases is taken.

Mr. Dennett states:

Mr. Pollard was formerly under Mr. Glavis at Portland. Complaints reached us of the character of his work, and also complaints reached us from Mr. Glavis himself to the fact that he had not handed in money given to him for payment of commissioner's fees to the party earning them. An examination was made by Mr. Glavis, but while the indications were not altogether favorable to Mr. Pollard, Mr. Glavis reported to us that he could not settle the case. There was an additional charge also that Mr. Pollard had borrowed money from Senator Borah and had neglected to pay it the same, and it was only upon our calling on Mr. Pollard for explanation that the check was sent to Senator Borah. Mr. Glavis reported this debt, having advised that he [Glavis] had learned of this debt by holding Borah's letter up to the light and looking through a thin envelope. I, therefore, did not feel like acquiescing in Mr. Glavis's request for Mr. Pollard specifically. (D., pp. 10-11.)

Mr. Pollard's present chief has since asked for his removal for having willfully submitted false daily reports. Pollard was in Portland, Oreg., August 9, 1909, and submitted reports showing that he was taking affidavits that day in the interior of the State. (D., pp. 12-13.)

The statements in Glavis's letter to Dennett of July 26, 1909, concerning the reasons why he had stated to Commissioner Ives that the Government was not prepared to proceed to hearing the matter, were carefully analyzed and answered by Mr. Schwartz in his statement (S., pp. 74-78.)

With respect to the last page of the letter quoting the telegram passing between himself and Mr. Dennett as to affidavits left in Portland, and the admissions by coal claimants and the statements incurred in by his stenographer (Ex. 18), Mr. Spaulding, purporting to set forth what transpired between him and Commissioner Ives when the Commissioner wrote the letter of July 26, the Commissioner says:

Mr. Glavis has misinterpreted my feeling in this matter. My first natural feeling was that of anger, and followed by a feeling of astonishment and disgust, and for the first time of the full realization of what a viciously inclined mind Glavis had and the vicious directions he was tending. * * *

The telegram in question at first I could not remember. * * * after a few moments, however, I recalled the circumstances which he describes, and he explains the reasons. (D., pp. 14-15.)

The matter seems to be wholly immaterial except as bearing upon the attitude of Mr. Glavis toward the commissioner, because the affidavits referred to in Glavis's telegram of June 23 were, as he stated, forwarded to him on the 21st, and whatever omissions he claimed to be made are contained in those affidavits. Mr. Dennett continues:

What he says about legislation and my recommending it is perfectly correct. I certainly joined in the recommendation of the department for legislation which would cure the vexatious con-

which existed in Alaska, and which arose out of the peculiar conditions in a country undeveloped and in a territory hardly accessible.

To the statement which he submits, given by Mr. T. P. McDonald, he adds a memorandum stating:

"Immediately after the taking of the above affidavit and on this 29th day of June, 1909, in Mr. Glavis's office, room 219, Federal Building, Seattle, Wash., T. P. McDonald, the above-named deponent, stated in the presence of both of us that he had made the statements identical with the above statements to Mr. Fred Dennett in the General Land Office at Washington, D. C., *prior to the passage of the act of May 28, 1908*, and that Mr. Dennett said that if the Alaska coal claimants wanted to get their claims they had better get together and have legislation passed that would enable them to carry out the intentions with which they originally entered coal lands in Alaska." (D., 56.)

The statement which he submits, given by Mr. T. P. McDonald, Dennett says,

is manifestly on the face of it untrue as far as the first portion of the statement is concerned. On page 2 of the statement of Mr. McDonald is the answer to the question:

"When was this company organized?"

Answer. "Some time last year; in 1908. *It was after the passage of the law; the organization was not complete until some time in 1909, but it was started last year, possibly in December, 1908.*"

There need be no other refutation of the statement that "the statements identical with the above statements" were made to me in the General Land Office *prior to the passage of the act of May 28, 1908*, when the statement itself refers in the most essential portion, namely, the organization of the cooperative company, to a date *subsequent to the passage of the act.* * * * (D., pp. 56-57.)

GLAVIS'S ANIMUS.

The animus of Mr. Glavis with respect to Commissioner Dennett, as well as to Secretary Ballinger, is perfectly revealed by a letter dated July 31, 1909, written by him to Mr. Schwartz, which letter was forwarded to Secretary Ballinger immediately upon its receipt. It is dated Portland, Oreg., July 31, 1909, and reads as follows:

Personal.]

* * * * *

DEAR SCHWARTZ: Dennett and I had quite a talk on the coal cases, especially that part showing him up. He has no doubt written you stating that I am trying to involve him, etc. I want you to weigh the facts and determine whether my action was not the best way in which to present it—think of the other methods that could have been followed. He realizes that he has not done right. I could go into details and tell you many things, but I shall not do so because the purpose of this letter is not to influence you against Dennett; however, I do not want him to impair our friendship, which I prize very highly, as I have few real friends. I again do not wish our friendship to influence you in doing your duty officially.

Keep out of the cases, if possible—let Dennett fight his battles.

It is my opinion that neither Dennett nor B. will last long surely not Dennett—he *can not remain* in. Now, under such circumstances, why not you try for the place? I am quite sure you win out.

In other words, Schwartz, you have known my opinion of D. a long time, and as he is in a tight place at present he will be apt to try to place the blame on someone else.

Your friend,

(S., p. 2; B., p. 23.)

Louis

Mr. Schwartz says:

I immediately replied to Mr. Glavis's letter, but the letter being personal, I retained no copy. In my letter I told him that he could not present to me unofficially such charges or statements against Dennett and me remain silent officially; that I would cause an investigation to be made, and either he or the commissioner would have to resign, or he, discovering his facts were in error, make suitable retraction; also, that so long as Mr. Dennett was commissioner political loyalty was to him, and that I would do nothing to succeed him. (S., p. 3.)

On or about August 10 Mr. Glavis took his summary and report or statement of charges to Mr. Gifford Pinchot, Chief Forester, who advised him to lay the whole matter before the President without delay, and gave him a letter of introduction to the President.

The foregoing constitutes a summary of the essential parts of the very voluminous records constituting the answers to the various charges and insinuations against Secretary Ballinger, Assistant Secretary Pierce, Commissioner Dennett, and Chief of Field Service Schwartz.

In a separate communication addressed to the President by Mr. Glavis under date of September 3, 1909, he transmits copy of a communication dated January 15, 1908, addressed by Clarence C. Noyes to the register and receiver at the United States land office at Juneau, Alaska, calling attention particularly to the fourth paragraph of the said letter, reading as follows:

The commissioner has furnished us with copies of all the correspondence and telegrams relating to our entries between the various special agents and also with your office. Up to date everything sent to be approved by each special and department chief. So now only delay will be occasioned through failure to receive plats, according to Judge Ballinger's advice.

Mr. Glavis says:

Mr. Ballinger was the commissioner at that time, and it was a violation of the rules and regulations of the department in force at that time to make public information furnished by special agents relative to their investigations.

This evidence he requests shall be considered in support of statements made on pages 19 and 20 of his statement of charges.

Mr. Ballinger replied to these supplemental charges in a letter addressed to you under date of September 10, 1909. He says:

While there was not, among the Land Office files, on the date of the said letter (January 15, 1908), nor at any time prior thereto, any document which in any manner reflected upon the bona fides of the Cunningham entries, and no matter of a secret or confidential character which Cunningham or any of his coclaimants might not very properly have seen, or the exhibition of which to them would have been a violation of any rule or regulation of the department, I most unequivocally and emphatically deny that copies of any such papers were furnished to any person whomsoever, and the statement of Mr. Cunningham is a fabrication pure and simple. If anyone secured copies of papers as stated in the quotation from Cunningham's letter, it was without the knowledge of myself or Mr. Dennett, the Assistant Commissioner, or Chief of Field Service Schwartz. The only excuse for the statement to the local land officers that such copies had been furnished which occurs to me is, that Cunningham may have been attempting to unduly impress such officers.

In a further letter addressed to you by Secretary Ballinger, dated September 9, 1909, he says:

In my interview with you on Tuesday evening last you stated that Louis R. Glavis had said to you in substance that I had acquired as Commissioner of the General Land Office a knowledge of the facts set out in the record in the Cunningham cases, which as attorney for the Cunningham claimants I afterwards used in advising them in their attempt to secure patents.

In answer to this charge he submitted the following:

(1) That as Commissioner of the General Land Office I had no knowledge of the specific facts or any facts contained in the records and files of the General Land Office, further than what was contained in Special Agent Love's report. The files were not laid before me, nor examined by me at any time, nor were their contents made known to me. (2) At the time in question I was advised by Mr. Schwartz that the files of the General Land Office showed only the entries and Agent Love's report, together with a general report on Alaska coal entries by Agent Jones. (3) At the time Mr. Glavis made this statement to you he well knew that the memorandum book of Clarence Cunningham and affidavits taken by him, spoken of in his statement had not been reported by him to Washington, and had not become a part of the files of the General Land Office, or in any way brought to my attention while I was commissioner. The records show that this book was not mailed to Washington by Glavis until the 21st day of April, 1908. My resignation took effect on March 4, 1908. In this respect Glavis would appear to have designedly suppressed the truth.

CONCLUSIONS.

The conclusions which, in my opinion, are very clearly established by these papers, are as follows:

First. The insinuations or charges of improper action on the part of Secretary Ballinger, Assistant Secretary Pierce, Commissioner Dennett, or Chief of Field Division Schwartz are, in my opinion, entirely disproved. So far from taking any action to favor the C. B. Bingham claimants, the record clearly shows that Secretary Ballinger was scrupulously careful not in any respect to act upon these claims for the reason that during the summer of 1908, while he was in no manner connected with the Government, he had been consulted by some of the claimants with respect to the issuance of patents, and he had called upon Secretary Garfield for the purpose of ascertaining the attitude of his department thereon. Neither his action nor any of his written or spoken expressions were favorable to these claimants. The utmost he did was to instruct the Land Office to promptly investigate and dispose of all pending cases.

Second. The suggestion that it was unlawful for Mr. Ballinger to have any professional relation with these claimants because of his previous incumbency of the office of Commissioner of the Land Office is, in my opinion, unsound. The suggestion is based on section 3469 of the United States Revised Statutes, which enacts:

It shall not be lawful for any person appointed after the first of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was an officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee.

In the case of *W. D. Harlan* (17 Land Dec., 216) Secretary of the Interior Smith, in a well-reasoned opinion, held that the words "claim against the United States," as used in that section, must be construed to mean a money demand against the United States. In an earlier decision (4 Land Dec., 179), which gave a wider application to the words, was overruled. In *Yeater v. Prince* (33 Land Dec., 137), this construction was adopted and followed by Acting Secretary Ryan. A similar construction has been given in section 10 of the act of March 3, 1863, now constituting section 3469, Revised Statutes, relating to the assignment "of any claims in favor of the United States," by Attorney-General Edwards (12 Op., 543); and in section 5498, Revised Statutes, relating to the prosecution of any claim against the United States by an officer of the United States, etc. It appears only to have been applied to the prosecution of money

Third. The Cunningham locations were made in July and August, 1904. All but three of them proceeded to entry prior to May 1, 1907, and the remaining three in October, 1907, payments aggregating \$52,800 being made and covered into the Treasury.

The Government has had an abundance of time to investigate the validity of these entries. The entrymen are certainly entitled to know with reasonable promptness the objections to issuing patents on their claims and to have such objections disposed of within a reasonable time. The attention of the Land Office was specifically directed to these claims in August, 1907. They were investigated by Agents Love and Jones. They were put in Mr. Glavis's hands, together with the investigation of all other Alaska coal-land locations and entries in January, 1908. He had the benefit of the report of Messrs. Love and Jones. All the essential facts relating to the claims seem to have been ascertained by him in the spring of 1908. Indeed, the claimants do not appear to have made any concealment of the facts upon which their claims depend. Except during a period of not exceeding two months (April and May, 1908), when proceedings were suspended owing to the exhaustion of the appropriation, Glavis had upward of two years in which to complete his investigations. He was furnished by the land office with all the assistance which he requested. All efforts to induce him to bring his investigation to a conclusion were met only with requests for further assistance, coupled with criticism of his superior officers, as well as of other special agents who had been connected with the cases; and every time the General Land Office urged a speedy completion of the work—which, it may be observed, was merely preparatory to a trial of the questions involved in the entries, for the purpose of determining whether or not patent should issue—Glavis advanced some more or less specious reasons why he was not ready to formulate objections and proceed to trial.

Instead of hampering or interfering with him, every facility was given to him by the Interior Department, and, with one or two immaterial exceptions, every request for assistance was promptly granted. Had the department desired to improperly pass the claims to patent it might have done so in January, 1908, by simply acting on the favorable report of Special Agent Love, without notifying Glavis that the claims had been clear listed; or, when the fieldwork was redistricted, these claims might have been left in charge of the new chief of field division at Portland when Glavis was transferred to Seattle.

Fourth. Glavis's claim that he prevented the Government from being defrauded by procuring a reference to the Attorney-General of the questions of law involved, and the overruling by him of an

opinion written by Assistant Secretary Pierce, which would have enabled the Cunningham claimants to procure patents on their claims. This is absolutely disproved by the record, which shows: (1) That the letter submitting the questions to the Attorney-General, the first of which was prepared by Mr. Schwartz in conference with Glavis and was in part suggested by him, by its very terms *excluded possible reference to the Cunningham claims*; and (2) that the explanation of the somewhat ambiguous phrase "initiation of the entry" used by Assistant Secretary Pierce, his construction of the statute did not differ from that given to it by the Attorney-General in his opinion.

Fifth. The intervention of the Forestry Bureau, procured by Glavis, is shown by the record to have been entirely unnecessary to the protection of the interests of the United States. It was even unnecessary to secure a postponement of the hearing on the Cunningham claims, as Special Agent Sheridan of the Land Office, who had been sent to conduct the hearing on the claims, after a conference with Glavis, concurred in the advisability of a postponement until after the completion of a field examination, although for reasons different from any which had been previously advanced by Glavis, and he advised the General Land Office.

Sixth. Glavis's "report" and summary abound in contradictions and misstatements. They omit to a degree that amounts to absolute suppression letters, telegrams, and other documents, some of which were in his possession, and others which were available to him, which completely rebut inferences he seeks to have drawn from those which he does submit.

Seventh. The action of each and every official of the Land Office referred to in Glavis's charges appears to have been inspired by a perfectly proper desire to bring to a conclusion an investigation which was prolonged beyond all reason, and which, if it had been prosecuted with due diligence, and if Glavis had properly availed of the assistance placed at his disposal by the Land Office, should have been completed and ready for trial not later than the autumn of 1908. The claimants were entitled to have the objection to their claims formulated and brought to hearing with reasonable promptness, and the interests of the Government did not require and were not advanced by the prolonged delays and inaction of Special Agent Glavis. In this connection it may be pointed out, as an example of Glavis's habitual procrastination, that although, pursuant to his request of April 11, 1908, to forward to him all original papers relating to Alaska coal entries and declaratory statements upon his representation that the statute of limitations would prevent criminal prosecutions after the following October, and the cases must therefore

presented during the month of May, all such original papers and documents were, by direction of the General Land Office, immediately transmitted to him by the Juneau office, *no proceeding whatever was taken by him* to bring these criminal prosecutions or to take any steps in connection therewith.

Glavis appears at all times to have been prolific in criticism and fault finding of other officials of his department, desirous of increasing his jurisdiction, ready with reasons for delay, but never ready to complete anything he undertook. His action in appealing to the Forestry Bureau of the Department of Agriculture to intervene in these cases, without consulting any of his official superiors, was a breach of all proper discipline, which is peculiarly aggravated because taken on the very day when he complained to Secretary Ballinger in person that he was being forced to a hearing before ready with necessary evidence, and was referred by the Secretary to Chief of Field Service Schwartz. That he could have had no lack of confidence in Mr. Schwartz is shown by his personal letter to him dated July 31, 1909, in which he expresses his friendship for Schwartz, tells him that in his opinion neither Secretary Ballinger nor Mr. Dennett can last, and advises him to try for Commissioner Dennett's place, with the obvious suggestion that he, Glavis, can then take Schwartz's place.

Glavis's actions appear to have been founded upon a wholly exaggerated sense of his own importance, and a desire for personal advancement rather than on any genuine desire to protect the interests of the Government, and this species of megalomania has finally led him to submit to you charges of improper motives and conduct against his official superiors, which, in my opinion, are so unjust and unfounded as to merit his immediate separation from the service.

Respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

The PRESIDENT.

The CHAIRMAN. You may proceed.

Mr. VERTREES. Mr. Glavis, when we adjourned on yesterday we were considering the paper submitted to Mr. Pierce for his opinion with reference to the proper construction of the act of 1908, and during the investigation you had been asked to make section 4 a part of the statement which you made. I wish to ask you now with reference to that, and reading it in connection with the first part; it reads the way, does it not:

There were pending in the various land offices in Alaska unperfected coal entries on which payment had not been made and cash certificates had not issued. * * * Application is now being made from time to time that certain of the entries be referred to and pending on March 28, 1908, be now accepted, cash price received, entries permitted to go to patent under the terms of this act.

And then:

This department would be pleased for your official opinion as to whether those entries may be completed and patent issued in cases wherein the law has been complied with except in the four classes of cases enumerated, one of those being No. 4, which I understood you to say you yourself prepared. Is that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, you there submit this question:

A verbal agreement by two or more entrymen, made prior to the initiation of entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

Now, you are familiar with the procedure, I assume, and therefore will ask you in order to clear the matter for us to state if in the patenting of coal claims under the Alaska laws, in a general way, the procedure is not about this, that the claimant first locates—that is to say, he stakes off his claim—and then later he files a declaratory statement which is called the “first filing,” in which he states that he has done this, and gives a general description of it. Is that right?

Mr. GLAVIS. It is called a “declaratory statement” or “filing.”

Mr. VERTREES. A first filing?

Mr. GLAVIS. Not a first filing, but a filing.

Mr. VERTREES. And that is known as a “declaratory statement.”

Mr. GLAVIS. Yes, sir; it is called a declaratory statement.

Mr. VERTREES. Now, he has a whole year to do that from the time in which he first stakes the land off, has he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, from that time he then has three years in which to perfect his entry, has he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the first thing he does to perfect his entry is to make application, and it is a formal application, stating that he wishes a patent for the land, and he must have an exact survey and a description, and he makes a certain affidavit or oath with reference to it when he does, does he not?

Mr. GLAVIS. He does; but that is not the first action taken. The first action taken is the location.

Mr. VERTREES. We have gone from that. He locates first, and then he files his declaratory statement, and then he has a year in which to do that; is not that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, we have passed from that to his application, which he has three years to file, has he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the making of that application is the first step in his entry, is it not; and when he does that he is then an entryman, is he not?

Mr. GLAVIS. No, sir; that is not the first step he takes with a view to getting the entry, but it is the last step taken.

The CHAIRMAN. Will you speak a little louder? I did not hear you.

Mr. GLAVIS. It is the last step taken to secure the entry.

Mr. VERTREES. What is the initiation of the entry; is that not it?

Mr. GLAVIS. I think the initiation of the entry is the initial act taken with a view to making an entry; which would be in the case of coal filing, the coal location.

Mr. VERTREES. You say you think that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Were you not examined on this question heretofore? Look at page 384 of the record.

Mr. GRAHAM. On page what?

Mr. OLMSTED. On page 223: "A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be * * *, etc." I want to ask you what you meant by the term "initiation of the entry?"

Mr. GLAVIS. Any time before the entry was made.

Mr. OLMSTED. Any time before the entry was made?

Mr. GLAVIS. Yes, sir; and cash paid.

Mr. OLMSTED. What do you mean by the "initiation of the entry?"

Mr. GLAVIS. The initiation of the entry was the time they make the entry, and the entry that—

Mr. OLMSTED. What do you understand by the "entry?"

Mr. GLAVIS. The entry is when they make payment for the land; that is the last thing they do before the land office, at which time they pay for the land, \$10 an acre.

Senator PURCELL. That has been corrected, Mr. Vertrees, to "the initiation of the entry was the first step taken."

Mr. VERTREES. Where is that correction?

Mr. GLAVIS. I corrected that yesterday morning. I would also like to call your attention to the fact that, as the record shows on page 384, I was interrupted in making my explanation as to what the initiation of entry was; I was not permitted to finish that explanation in that answer.

Mr. VERTREES. You were asked by Mr. Olmsted:

When you said the "initiation of the entry," you meant the entry?

Mr. GLAVIS. Yes, sir.

Mr. OLMSTED. That is all.

There was no correction of that was there?

Mr. GLAVIS. No, sir; the way that reads—not that answer to that.

Mr. VERTREES. I read now from the opinion of the Attorney-General—the summary of his opinion, on page 778 of Senate Document, as follows:

Some confusion would naturally arise in the interpretation of both of these documents from the use of the words "initiation of the entry." The term "entry," as used in reference to public lands, means, in its technical sense, the filing with the register of the land office of a claim to a portion of the public lands for the purpose of acquiring an inchoate right thereto. The "initiation of the entry" would, therefore, be the presentation for filing of the declaratory statement of location and claim required

by section 2349 of the Revised Statutes. But, in a popular sense, the term is sometimes loosely applied to various proceedings under the land laws, and the courts have used it as importing the physical act of entering and settling upon land. (Am. & Eng. Ency. of Law, Tit. Public Lands, p. 806.) The act of 1908 permits consolidation by persons who have in good faith, etc., "made locations of coal lands in the Territory of Alaska," etc. The phrase "initiation of the entry," is obviously used in these two papers to indicate action taken after the location was made, in filing the papers constituting an entry in the office of the register and receiver. Bearing in mind that but few claims had proceeded to entry, payment, and the issue of certificates, there is no inconsistency between the view of the statute taken by the Attorney-General and that expressed by Assistant Secretary Pierce in the following language:

"It is assumed that the difficulty with which your office is confronted in passing upon these applications is merely that technical objection might have been raised to the good faith of the claimant or entryman because of the understanding, arrangement, or agreement contemplated or entered into with respect to the completion of such entries prior to the passage of the act of May 28, 1908." (P., p. 94.)

If, as would therefore appear, the Assistant Secretary was dealing with the effect of arrangements or agreements made after location and before the perfecting of the entry, then his opinion does not differ with that of the Attorney-General rendered June 1909, in which opinion the conclusion is reached that—

And I wish to read that also—

"If the agreements or arrangements mentioned in your letter were entered into before the locations of coal lands in Alaska after they had made their locations in good faith in their own interest alone, such locations may, under the provisions of the act of May 28, 1908, lawfully pass to entry and patent in accordance with the terms of said act. On the other hand, I am of the opinion that, if such agreements or arrangements were entered into prior to such locations being made, such locations do not come within the provisions of said act and can not be lawfully passed to entry and patent." (Pp. 112-113.)

I read that to show if there is not a distinction made by the law and recognized by the law under which you were operating between locations and entries or applications, and that the application for entry is made at the initiation of the entry made within three years, some time after the location had been made.

Mr. GLAVIS. I never considered it so. I considered it in the sense that the Attorney-General states that. It is sometimes popularly understood and sometimes used by the court as having been the physical act of entering and settling upon the land, because the coal-land laws require a settlement to be made, and therefore I would think that the first act required by law would be the initial act.

Mr. VERTREES. Not only the initial act of making the claim, but the initial act of the entryman, and does not the statement you made there speak specifically of an agreement of two or more entrymen made prior to the initiation of the entry?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then you above there distinguished between those who have not paid and received their certificate and those who have, and expressly stated that his opinion is wanted with respect to this class of applications, namely:

Application is now being made from time to time that certain of the entries above referred to, and pending on March 28, 1908, be now accepted, cash price received, and entries permitted to go to patent under the terms of this act.

Mr. GLAVIS. Reading the two together I think that objection might readily be made to it, but the reason I inserted that was because only entrymen I had in mind were the Cunningham entrymen, and three or four others.

Mr. VERTREES. You are now submitting what you had in mind.

Mr. GLAVIS. That is the only way I can explain the reason why I inserted that.

Mr. VERTREES. I am not on that. Now you have seen fit to criticise very severely, both publicly and privately, First Assistant Secretary Pierce, for construing that law differently from what you say you intend and the way you construed it, and I want to present to you the features of that law and ask if the Attorney-General did not confirm him.

Mr. GLAVIS. He may. I do not think he did. I think it is different.

Mr. VERTREES. Very well. Now, is it not a fact, too, that the Cunningham group refused to come in under the act of 1908?

Mr. GLAVIS. Yes, sir; I would like to give the date of the first act, and the official notification that they actually did refuse to come under that. That was by a telegram I received from the General Land Office—I think it is in this record—it is June 29, I think, 1909, advising me that the Cunningham claimants had decided to stand under the old law, and that immediate hearings would follow. There was another letter that was written me, oh, six or eight months before that, saying that the office had been informally advised that the Cunningham claimants would not come under the new law, but the first definite official statement made to the General Land Office that I had received was June 29, 1909; I think that is the date.

Mr. OLMSTED. By the new law you mean the act of 1908, which is discussed in the opinion of the Attorney-General?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, isn't it true that on October 7, 1908, Mr. Schwartz, as acting commissioner wrote you a letter to Portland, in which he told you that the office had been informally advised that the various entrymen known as the Cunningham group had concluded to stand under the old law and ask for a patent on the now pending application?

Mr. GLAVIS. I just now stated that in my statement.

Mr. VERTREES. So you distinguish between the informal advice and the official advice; that there was no official advice until later, although Mr. Schwartz informed you that he had been informally advised that such was the case, and was it not the case that they did stand on it all the time?

Mr. GLAVIS. Well, when I was back here in May, 1909, they had not determined definitely what they were going to do. They were trying to get the land office to patent under the old law, but they had not then definitely advised the office, or I had not been so advised, was not so advised, that they had declined to come in under the new law.

Mr. VERTREES. But you had been advised that the office had been informally advised that they would stand under the old law, had you not?

Mr. GLAVIS. Yes, sir; in October.

Mr. VERTREES. And is it not a fact that the statement which you assisted to prepare and submitted to Mr. Pierce excludes in express terms all claims that have been fully entered—that is, where cash had been paid and receipts given?

Mr. GLAVIS. No, sir; it was not; and I would like to call your attention to my report with reference to the Cunningham cases that I made in March, 1909, which—

Mr. VERTREES. Mr. Glavis, I call your attention now——

Mr. GLAVIS. I was just explaining.

Mr. VERTREES. I know that you were just explaining, but I say it is not necessary for you to explain your conduct.

Mr. GLAVIS. But I think I have the right to explain my answer.

Mr. VERTREES. If you make an answer and then try to explain that, I do not object. Now you proceeded to say what that report says. I am asking you about this paper which you submitted to Mr. Pierce in the report that you have read. I am not on that question; I am not criticising you or your report. The question is, you have criticised Mr. Pierce here on the construction of the document on which his opinion was based.

Mr. BRANDEIS. I submit, Mr. Chairman, that the witness is entirely in accord with the best practice as laid down by the chairman. He had answered the question directly by yes or no, and then proceeded to explain, and I think the chairman laid down the rule yesterday that that practice would be adopted as the method of procedure.

Mr. VERTREES. This perhaps is a very good place, may it please the chairman, to consider that question. Of course we all recognize the right, where a witness makes an answer, that he has the right to explain that answer; but I do not think that under the guise of an explanation you can become discursive and go into something else that does not relate to his answer. Now we say that we have brought to his attention a construction of a particular act, and he has gone so far as to say that a public officer who gives the act a certain construction was really not a proper officer. Now the fact is, and we have shown, that that officer gave a construction upon a certain statement made to him, and his opinion was called for with respect to that statement. Suppose that statement is erroneous. That is a wholly immaterial question now—I am not meaning to admit that it is erroneous—but just assume that it was wholly erroneous, but the official to whom it was submitted gave his opinion on that paper. The question now is as to his conduct with respect to it. That is the inquiry by this committee, so it does not matter what he would say in his report or anything like that.

Mr. BRANDEIS. I think if Mr. Vertrees will have his memory refreshed as to the question which he put he would not make this argument, because it is a direct explanation of the answer to the question Mr. Vertrees put.

The CHAIRMAN. Was this a report?

Mr. GLAVIS. It was a report that I submitted to the Attorney-General.

The CHAIRMAN. Was it a report that you submitted to Mr. Pierce in connection with that report which has been referred to?

Mr. GLAVIS. I did not submit anything to Mr. Pierce, but a couple of days before I saw Mr. Pierce I discussed the Cunningham cases with ex-Governor Moore, and I recall distinctly that he called for the papers from the General Land Office—that is, the Cunningham files—and I discussed that with him. They were sent him—all the papers were sent him; also this report of March 23 relative to the Cunningham case.

Senator FLINT. You did not know, as a matter of fact, that Assistant Commissioner Pierce did see that report at that time, did you?

Mr. GLAVIS. No, sir.

Mr. McCall. Mr. Chairman, the witness desired to explain his answer, and of course whether the explanation had any bearing on the answer is for the committee to determine, but I think he ought to be permitted to make such explanation as he sees fit, and I think it would be in the interest of economy of time to allow him to do so.

The CHAIRMAN. Very well. Proceed with your explanation.

Mr. Brandeis. I desire the question and answer read as far as Mr. Glavis has proceeded with his answer.

(The reporter read as follows:)

Mr. Vertrees. And is it not a fact that the statement which you assisted to prepare and submitted to Mr. Pierce excludes in express terms all claims that have been fully entered; that is, where cash had been paid and receipts given?

Mr. Glavis. No, sir; it was not, and I would like to call your attention to my report with reference to the Cunningham cases that I made in March, 1909, which—

Mr. Glavis (continuing). Which shows that I also had the Cunningham case in mind.

The CHAIRMAN. The committee will receive that, but it strikes the chairman that it has no bearing on the question involved. Proceed.

Mr. Glavis. In my report of March 23, 1909, on page 505 of the Senate document—

Mr. Brandeis. The special reference is on page 507, I think, the first paragraph.

Mr. Glavis. This report referred exclusively to the Cunningham cases, and after outlining what the evidence so far secured showed I state in the first paragraph on page 507 as follows:

I have not been advised whether this group intend to consolidate their claims in accordance with the act of Congress approved May 28, 1908, but since said act is only for the benefit of bona fide coal entries, any entry fraudulently obtained and subject to cancellation can not be considered as bona fide entry and therefore could not be allowed the benefit of said act. I state these filings were fraudulently obtained, because if the facts admitted by the agent of the claimants and the claimants in their affidavits hereto attached had been set out in the declaratory statements filed in the land office the same could not have been accepted and allowed without violating the statute.

And then I state that this is similar to certain Supreme Court decisions.

The CHAIRMAN. That is the second paragraph on page 507, is it?

Mr. Glavis. It is the first paragraph.

Mr. Vertrees. As I understand you, this is the only matter or thing that you prefer against Assistant Secretary Pierce?

Mr. Glavis. Yes, sir.

Mr. Vertrees. Do you know how long he has held the position of assistant secretary?

Mr. Glavis. No, sir; I do not.

Mr. Vertrees. And to emphasize it—and then I will pass from it—his construction of this act on that statement which you helped to prepare and submit to him, is the only matter or thing that you urge against Mr. Pierce as secretary.

Mr. Glavis. Yes, sir.

Mr. Vertrees. Well, now we come to Mr. Dennett. What do you say was the principal thing, or first thing, or if you prefer, one thing, against Mr. Dennett's official conduct?

Mr. Glavis. Mr. Vertrees, I can reiterate what I stated yesterday if you want me to.

Mr. Vertrees. I am just asking you for one thing.

Mr. GLAVIS. Oh, well, one of the things are the letters he wrote Mr. Schwartz.

Mr. VERTREES. Well, where are they to be found? I refer to letters on pages 426 and 427 of the Senate document dated July 22, and July 27, 1909.

The CHAIRMAN. Mr. Vertrees, will you please give us the pages.

Mr. VERTREES. It is from page 425 to 427.

Mr. GLAVIS. Yes, sir; I guess that is all—no, then there is been a telegram to Judge Ballinger, and I think that was all of them. I think there are also a couple of telegrams from Mr. Schwartz.

Mr. VERTREES. Well, that is putting in so much that I will have to get at it by fractions, Mr. Glavis. I will take up this thing in my own way. You stated, as I understood you, that one thing that Mr. Dennett had done, which you regarded in the light of official conduct, was that you telegraphed to him asking whether or not the Alaska coal claimants had made any admissions to him. He replied that they had not.

The CHAIRMAN. What page of the record is that?

Mr. GLAVIS. That will be found on page 51 of the Senate document.

Mr. VERTREES. On June 23, 1909, it appears that you telegraphed to him as follows:

Have not received affidavits left in Washington to be copied. Have any admissions been made to you by Alaska coal claimants? Answer wire quick, and please send synopsis of such admissions.

Mr. GLAVIS. I added also that the same might aid investigation.

Mr. VERTREES. Yes; the same might aid investigation; and on the date of June 24, the next day, he replied:

Matter mentioned in your wire yesterday. Affidavits transmitted the 21st of June. Admissions made by claimants.

Now, as I understood you at the time you sent that, or thereabouts, a few days afterwards, you took some affidavits of the claimants in Seattle, in which one of them said that he had talked over the matter with Mr. Dennett, and is not that the statement on page 55: that the affidavit of H. R. Harriman, and the concluding part of it? The affidavit was sworn to the 29th of June, 1909, before you, and in the affidavit, State of Washington, County of King, Mr. H. R. Harriman makes this statement, among other things, about the situation and condition of his claim, and then he says:

Q. The statements herein above made as to the understanding of the various conditions with the Alaska Petroleum and Coal Company was fully explained by you to Mr. Dennett, who is now Commissioner of the General Land Office?—A. I called upon the Commissioner of the General Land Office shortly after my arrival in Washington, and it was suggested that certain men be called in—Mr. Schwartz, I think, was a member of the board of review—and we were discussing the proposed coal legislation, and I entered very fully into the situation of the Alaska Petroleum and Coal Company as an example of why such legislation was desirable.

Q. When was that?—A. In May, 1908. I think every phase of above statements were there discussed; but it came rather as incidental.

That is one of the things that you predicate your statement on, is it not?

Mr. GLAVIS. Yes, sir; that is one of the things I predicated my statement on.

Mr. VERTREES. What else with reference to this matter?

Mr. GLAVIS. This T. P. McDonald statement and affidavit of special H. T. Jones and myself, made afterwards with reference to the T. P. McDonald affidavit.

Mr. VERTREES. That was the same day, was it not, the 29th of June, 1909?

Mr. GLAVIS. Yes, sir; and also a statement which I did not put into this record—it is not in this record because we did not make an affidavit about it. It was a statement that Donald A. McKenzie made to Special Agent H. T. Jones and myself stating that Harriman had made this statement to Mr. Dennett, and that Harriman explained fully the exact standing of the petroleum and coal company in relation to coal entries which they claimed to control.

Mr. VERTREES. If I understand you, Mr. Glavis, Special Agent Moore told you that he had had a conversation with Mr. Harriman.

Mr. GLAVIS. No; Special Agent Jones.

Mr. VERTREES. Special Agent Jones, in which Harriman had related to him what had occurred at this interview in Washington.

Mr. GLAVIS. No, sir; that is incorrect. Mr. Donald A. McKenzie told Special Agent H. T. Jones and myself what had occurred in Washington between Harriman and Commissioner Dennett.

Mr. VERTREES. McKenzie said that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What was it, that Jones told you—that Harriman had told him something?

Mr. GLAVIS. No, sir; I did not say that Jones told me anything that Harriman said.

Mr. VERTREES. Well, what is this additional statement to what you have not already in the record—that is what I want to get at—on page 56?

Mr. GLAVIS. Besides this which appears in the record, a few days before or a few days afterwards, Donald A. McKenzie—

Mr. VERTREES. After what?

Mr. GLAVIS. After June 29, 1909—I think it was about a week one way or the other—Donald A. McKenzie was taking his affidavit in the office, and he discussed generally the Alaska coal claims, and during this conversation stated to Special Agent H. T. Jones and myself that he had met Harriman that spring or winter while they were trying to get this legislation through Congress—the act of May 28, 1908—and that he had advised Harriman to make a clean breast of the connection of the Alaska Petroleum and Coal Company with the coal claims in the Hunt group. That is the additional statement.

Mr. VERTREES. But that is something that this man told you that Harriman said to him; is that right?

Mr. GLAVIS. Yes, sir; Harriman told Mr. Jones and myself.

Mr. VERTREES. What I am getting at is that you did not get it from Harriman directly.

Mr. GLAVIS. That corroborated Harriman's statement.

Mr. VERTREES. I am not on the corroboration. I want to know whether or not you are telling something that Harriman told you or something that somebody else told you that Harriman had said.

Mr. GLAVIS. No, sir; it is what McKenzie told me that Harriman had said.

Mr. VERTREES. McKenzie told you that Harriman said something. Very well. We will eliminate that. So come back now to what Mr.

Harriman told you himself. What Mr. Harriman told you him down in the affidavit, is it not?

Mr. GLAVIS. Well, it is; yes, sir; it is that, and he spoke out what was actually taken down.

Mr. VERTREES. Well, it was of the same tenor and effect, was it?

Mr. GLAVIS. It was about the same thing.

Mr. VERTREES. And it was about that time, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, I understand it. Now, there about eight or nine hundred Alaska claims, were there not, in a

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And this conversation that this man had with May, or about May, 1908, in Washington with the commissioner; is right, is it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And he is relating it to you in June, 1909, or than a year thereafter, and when your telegram was sent in to commissioner Dennett to ask him whether or not any Alaska coal claimants had made any admissions, this was the situation, was it not? Mr. GLAVIS, that it was more than a year after the alleged admission was made, and it was an admission made to some one or two of nine hundred claimants, and you just asked the general question, more a year from that time, whether or not any of that nine hundred made any admissions to him without specifying any place or time, statement or any names. Is that not the truth of the matter?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then when Mr. Dennett, in response to sort of general inquiry, made at that time, in that manner, without discussing or referring to any name, replied to you that none had been made, you thought that that was highly improper and was not official, because it was not true?

Mr. GLAVIS. No, sir; not when he replied. But after I saw these affidavits that they had told him, I was surprised that, had he done it, the interests of the service at heart, and knowing at the time, or about that time, that I was in the midst of my investigation of the Alaska coal cases, that he did not give me any such information or admission that any of the coal claimants would make any admission that they would aid me in such an investigation—that, and, in connection with that, when he arrived there and I submitted to him and discussed it with him, and that he said he did not know the number of the group, and afterwards he admitted recalling them, and his conduct during my conversation with him on July 27 or 26—which is set out here in the record on page 52—the synopsis of the conversation relative to the matter after that is what made me feel that he was unfaithful.

Mr. VERTREES. And the affidavit on which you began to present that opinion was the affidavit of Mr. Harriman—I read on page 52 of Senate Document 248, in which Mr. Harriman made the statement that after he got to Washington certain men were called in, and Mr. Schwartz, who was the Chief of the Field Service, was one member of the board of review, and that there was a board called in and were there discussing the proposed legislation, and there in the presence of all those gentlemen the conversation was had in which they entered fully into the situation of the Alaska Petroleum and

Company as an example of why such legislation was desirable, and then he adds that in the course of that he thinks every phase of the above statement was discussed, but rather as incidental. Now, that was the thing that aroused your suspicion, because Mr. Schwartz, when you called on him a year from that time and made a general inquiry or interrogatory, without mentioning the conversation you had—upon that you base it—together with what you have stated now as to your statement of his confusion when he talked to you.

Mr. GLAVIS. And the affidavit made by Special Agent Jones and myself, to be found on page 56, referred to the affidavit of T. P. McDonald and the statement made by McKenzie.

Mr. VERTREES. That refers to the affidavit of T. P. McDonald, does it not?

Mr. GLAVIS. Yes, sir. You will have to consider the McDonald affidavit in connection with the affidavit of Special Agent Jones and myself.

Mr. VERTREES. Do you say in that affidavit that Mr. Dennett had said that? Do you make any statement of that sort with reference to Mr. Dennett?

Mr. GLAVIS. No, sir; this affidavit refers to what Mr. T. P. McDonald said.

Mr. VERTREES. And it does not in anywise refer to the statement that Mr. Dennett made, does it?

Mr. GLAVIS. I will have to read that. I did not read it.

Mr. VERTREES. I do not mean the statement you have already mentioned that refers to Mr. Dennett but other statements.

Mr. GLAVIS. Yes, sir; the affidavit of H. T. Jones and myself referred to what Mr. T. P. McDonald states that Mr. Fred Dennett advised "that if the Alaska coal claimants wanted to get their claims, they had better get together and have legislation passed that would enable them to carry out the intentions with which they originally entered the coal lands in Alaska." That was the part here—

Mr. VERTREES. My question is that that does not relate at all to the previous statement that you have referred to of Mr. Dennett—it is a different statement.

Mr. GLAVIS. But the statement on page—what statement is that?

Mr. VERTREES. The one you have just read, about they would have to get together. The other was whether they had made any admissions or not; this one is about getting together. They are different statements, are they not?

Mr. GLAVIS. I will have to read the affidavit; I forget Mr. McDonald's affidavit now.

Mr. VERTREES. I am not asking you now about Mr. McDonald. I am asking you about Mr. Dennett.

Mr. GLAVIS. Your referred in your question, did you not, to what Mr. McDonald stated to us in reference to Dennett in conversations with Dennett?

Mr. VERTREES. Well, you can have it that way.

Mr. GLAVIS. I want to have it your way.

Mr. VERTREES. I will have it my way, if you will listen to me. I am asking here if you do not make affidavit on the 29th day of June, 1909, that immediately after taking McDonald's affidavit that he "stated in the presence of both of you that he had made the statements identical with the above statements"—that is, those in the affidavit—

"to Mr. Dennett in the General Land Office in Washington, prior to the passage of the act of May 28, 1908." Didn't he make that statement?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you swear there that he made that statement to you, and the statements of his view that he had given you that day, the 29th of June, were identical with the statements in his affidavit; and don't you use the word "identical?"

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what you say in your affidavit is that Mr. Fred Dennett—I mean that Mr. McDonald told you that prior to the passage of the act of May 28, 1908, he had this conversation with Mr. Dennett. Now, I will ask you, if the statements made in this affidavit, among other things which you say are identical statements, do not show that the company that he speaks of that was organized was organized in the year 1908, after the passage of the act; and if that is so, how could he have made that identical statement to you?

Mr. GLAVIS. Our affidavit said the statement is identical with the above statements.

The CHAIRMAN. Talk a little louder.

Mr. GLAVIS. He did not, of course, refer to that statement.

Mr. VERTREES. Of course, I know that.

Mr. GLAVIS. Our affidavit I do not think covers that. It says "the statements identical with the above statements"—that he, McDonald, had made—"to Mr. Fred Dennett in the General Land Office at Washington, D. C., prior to the passage of the act of May 28, 1908."

Mr. VERTREES. Yes.

Mr. GLAVIS. The statements that he made to Mr. Dennett, and which are identical up here, were the statements which he made prior to the act of May 28.

Mr. VERTREES. Sure they were. He could not have made them afterwards. That is what I am asking you about. You say they are identical? Your affidavit says all these were made in a statement in which he goes on to tell about the formation of a company which was formed after the passage of the act of 1908.

Mr. GLAVIS. Those are not statements identical with the above statements.

Mr. VERTREES. Those statements are identical, though.

Mr. GLAVIS. But this affidavit did not intend, of course, to mean that.

Mr. VERTREES. Your affidavit is too broad—that is what you mean, isn't it?

Mr. GLAVIS. No; not in the sense—we didn't think, perhaps, it was going to pass such a technical idea. But what we meant, and if this is erroneous, why, I would like to correct it now, and I think Mr. Jones would, that if the statements Mr. McDonald made to us, and to which we refer in our affidavits, were those statements relating to and made prior to the passage of the act of May 28, 1908.

Mr. VERTREES. Well, now another statement that you say in your affidavit that this man says Dennett made to them when they came on here prior to the passage of the act to get legislation, was that Mr. Dennett said, that if the Alaska coal claimants wanted to get their claims, they had better get together and have legislation passed that

would enable them to have carried out the intentions with which they originally entered the coal lands in Alaska.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Does not that indicate that Mr. Dennett was of the opinion that, as matters stood, they could not get along, and told them so and told them they would have to have legislation to help them out?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that was his view of the question? Well, now, so much for that statement of Mr. Dennett's, made as you have just described. What was the next thing with reference to Mr. Dennett that is bad? [After a pause.] You have stated that you had a conversation out west with Mr.——

Mr. GLAVIS. You don't want me to answer that other question, do you?

Mr. VERTREES. Yes: I thought you had.

Mr. GLAVIS. No, sir. Please read the question.

(The stenographer read the question as follows:)

Well, now, so much for that statement of Mr. Dennett's, made as you have just described. What was the next thing with reference to Mr. Dennett that is bad?

Mr. GLAVIS. Well, the letters that made me think that he was not acting in good faith were the letters that I referred to awhile ago that he wrote to Mr. Schwartz and Mr. Ballinger. They showed, I think, his views on it and his sympathies.

The CHAIRMAN. What page is that letter on, Mr. Glavis?

Mr. GLAVIS. Some of them——

Mr. VERTREES. On page 425 of the Senate document.

Mr. GLAVIS. Some of them are on page 425, 426, and 427; there are some others, but I do not know just where they are in here—some telegrams and letters that he wrote to Judge Ballinger which, I think, should be considered in connection with those others. He wrote them at the same time.

Mr. VERTREES. How did you get copies of those letters, Mr. Glavis?

Mr. GLAVIS. After Special Agent Spalding advised me that Dennett was writing peculiar or funny letters—I have forgotten the expression he used in it—in reference to the Alaska coal situation, I asked Special Agent Spalding to make copies of them, because they had occurred just at the time these other things had occurred, and made me feel that I ought to know what was going on to protect the coal claims.

Mr. VERTREES. What I asked you was, what means you resorted to to get them?

Mr. GLAVIS. I have explained that.

Mr. VERTREES. Well, you have told why. I asked you how you got them.

Mr. GLAVIS. I stated in the answer above.

Mr. GRAHAM. Read the answer.

(The stenographer read the answer as follows:)

After Special Agent Spalding advised me that Dennett was writing peculiar or funny letters—I have forgotten the expression he used in it—in reference to the Alaska coal situation, I asked Special Agent Spalding to make copies of them, because they had occurred just at the time these other things had occurred and made me feel that I ought to know what was going on—to protect the coal claims.

Mr. DENNETT in the General Land Office in Washington, in the name of the act of May 12, 1908. That is the statement.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you swear there that he made that statement to you and the substance of his view that he had given that to the Board of Commissioners with the statements of affidavit and that that is the work of Dennett?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what you say in your affidavit is that First Dennett—I mean that an affidavit that you made before the passage of the act of May 12, 1908, is that this correspondence with Dennett. Now, I will ask you if the statements made by this Board among other things which you say are identical statements in fact show that the substance that he speaks of that was sworn was sworn in the year 1908, after the passage of the act, and that is so, how could he have made that identical statements to you?

Mr. GLAVIS. Our affidavit said the statement is identical with above statements.

The Chairman. Talk a little louder.

Mr. GLAVIS. He did not, of course, refer to that statement.

Mr. VERTREES. Of course, I know that.

Mr. GLAVIS. Our affidavit I do not think covers that. It is the statements identical with the above statements—that Mr. McDougal had made to Mr. First Dennett in the General Land Office at Washington, D. C. prior to the passage of the act of May 12, 1908.

Mr. VERTREES. Yes.

Mr. GLAVIS. The statements that he made to Mr. Dennett, which are identical in fact, were the statements which he gave to the act of May 12.

Mr. VERTREES. Sure that was. He could not have made statements. That is what I am asking you about. You say the Board of Commissioners says all these were made in a statement in which he goes on to tell about the formation of a company was formed after the passage of the act of 1908.

Mr. GLAVIS. These are not statements identical with statements.

Mr. VERTREES. These statements are identical, though.

Mr. GLAVIS. But this affidavit did not intend of course that.

Mr. VERTREES. Your affidavit is too big to mean, isn't it?

Mr. GLAVIS. No; not in the sense—we do not mean going to pass such a technical idea. But it is erroneous, why, I would like to correct it, I would, that if the statements Mr. McDougal made to us, we refer in our affidavits, were those statements made prior to the passage of the act of May 12, 1908.

Mr. VERTREES. Well, now another affidavit that this man says Dennett said, that if the Alaska claims, they had better get together.

Mr. VERTREES. Did he immediately do it just by simple request?

Mr. GLAVIS. Oh, I asked him several times to do it; in fact I asked him to do it. I was his superior—

Mr. VERTREES. You mean you ordered him to do it?

Mr. GLAVIS. Yes, sir. I was his superior officer.

Mr. VERTREES. These were private letters that this stenographer had written for Mr. Dennett, and you several times had asked him to give you copies and he declined to do it, and then you ordered him to do it; is that it?

Mr. GLAVIS. No, sir. In the first place he did not decline to do it but he hesitated about it. Furthermore, he informed me that the letters had been mailed; some of them had been mailed by him, some by official frank without a stamp, and I did not consider them, therefore, private letters.

Mr. VERTREES. How did you find out that they had been mailed that way—did you ask him about it?

Mr. GLAVIS. I don't know whether I asked him or whether he volunteered that.

Mr. VERTREES. In other words, didn't you put that on him to make him give them up to you—proceed with that course to him to divulge that correspondence—put it to him that he had to do official franks, and he had to do it; that it was official?

Mr. GLAVIS. No; I might have mentioned that. He told me that I am quite sure he volunteered that information.

Mr. VERTREES. Among other things in this letter, on page dated July 22, 1909, Mr. Dennett says of you:

He also desires to get such statements—

Mr. GLAVIS. What page is that?

Mr. VERTREES. Four hundred and twenty-seven—

as to remarks that may have been made by Cunningham—

Or, I will go back [reading]:

Glavis states that he was desirous of having the field investigation completed in order to get the reports as to the single tunnel done for the work on all the other data in regard to improvements which would lead to evidence showing cooperation and intent to form a company. He also desires to get such statements and remarks that may have been made by Cunningham showing that Cunningham was operating for a company. He hopes, with this evidence from the field and documents, to establish a prima facie case and get the benefit of cross-examination of witnesses. He states that the idea of field investigation was one which he got from you. He seems to think that further evidence was necessary and that we were pressing him; he tries to evade the proposition of our offering all the help he asked for on the ground that the cases needed investigation by one head who should keep him on the matter all the time and investigate personally.

Now, didn't you tell Mr. Dennett—

Mr. BRANDEIS. Are you not going to read the rest of it?

Mr. VERTREES. If you want it; yes, sir.

Mr. BRANDEIS. I think the next paragraph will throw light on it.

Mr. VERTREES. What paragraph is that?

Mr. GLAVIS. Just continue.

Mr. BRANDEIS. Continue reading on.

Mr. VERTREES (reading):

He also states that we refused him Jones, but candidly admits that we offered every help he might desire otherwise. I told him that I wished he had waited until I came and not taken upon himself telegraphing to Shaw, as it occurred to me

calling upon another bureau to find fault with our action, and especially with a bureau which has been trying to pick flaws in our conduct of cases. I have wired Judge Ballinger, as you suggested, that under existing conditions I think it would be wrong to set these cases for hearing immediately. Will take this feature up with Judge Ballinger by correspondence.

Mr. BRANDEIS. And then the next paragraph, I think.

Mr. VERTREES (reading):

Glavis has these coal cases on the brain and can not see anything but just one line. I have told him how it looks to us and have reminded him of everything that we have done for him and that it looks as if he were returning our favors by not standing by us as he ought to. He has not acted as you or I would act under similar conditions. It looks a little treacherous to me, this calling in the Forestry.

Now, Mr. Glavis, he there tells you that under existing conditions he thinks it would be wrong to set these cases for hearing immediately.

Mr. GLAVIS. No. He tells Schwartz that.

Mr. VERTREES. I say, he tells Schwartz.

Mr. GLAVIS. He tells Schwartz that.

Mr. VERTREES. Doesn't he tell Schwartz that he told you that?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Did he tell you that?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Do you know whether he did wire Judge Ballinger as you suggested, that under existing conditions he thought it would be wrong to set these cases for hearing immediately?

Mr. GLAVIS. Yes; I got a copy of that telegram.

Mr. VERTREES. Well, now, let us see that.

The CHAIRMAN. What page is it in that book?

Mr. GLAVIS. It is page 257 [referring to list of orders, letters, telegrams, and other exhibits].

Mr. BRANDEIS. Of Mr. Sleman's chronological list.

Mr. VERTREES. You will see the number right at the top of the page there, 74. Probably you will find it there, Senate Document No. 74.

The CHAIRMAN. Is this the telegram on top of page 257?

Mr. VERTREES. On page 74 of the Senate document.

The CHAIRMAN. I mean on this compilation here.

Mr. COTTON. Yes, sir.

The CHAIRMAN. I don't think that telegram has been in evidence.

Mr. GRAHAM. At the top of page 74 of Senate Document 248. I think the one they refer to is there, Dennett to Ballinger, July 22, 1909—

Mr. VERTREES. It is on page 271 of the record of the evidence that is in.

Mr. GRAHAM. Sent to Ballinger at Hermiston, Oreg.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, on the same date there does it not appear that Mr. Dennett telegraphed to Mr. Ballinger, at Hermiston, Oreg., as follows:

Advise telegraphing Schwartz authorizing him to delay issuing notices in important cases subject our talk here until Sheridan can examine evidence obtained.

Mr. GLAVIS. Yes, sir. When he sent that telegram he also wrote the next day a letter to—the next day, July 23, 1909, he stated what cases that telegram referred to, and that is how I knew.

Mr. VERTREES. But the point I want to bring out now did not Mr. Ballinger immediately reply:

Considering my personal reluctance to direct proceedings in Alaska coal cases should make necessary directions to Schwartz.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That was done under date of July 23. Now, your letter of Mr. Dennett to which you refer is found on page 271 of the record, and doesn't it read as follows—this is from Mr. Dennett to the commissioner.

Mr. BRANDEIS. Page 271 of his present testimony?

Mr. VERTREES. Yes; of the record [reading]:

HON. R. A. BALLINGER,
Secretary of the Interior, Boise City, Idaho.

My DEAR JUDGE: I telegraphed to you yesterday advising authorization to go to trial not to set the Cunningham cases for trial immediately. The situation is as follows: Twenty-one claims are on the forest reserve; Glavis has so advised the Forester. He has joined him in moving for a delay until Kennedy can return from Alaska. His report of the field investigation. Glavis seems to expect a showing in the field which would indicate that all developments have been done with the purpose of advancing a single interest. He also desires to find out in what way the employees were paid, and information of this kind. Both Schwartz and I were of the opinion that he could go to trial on the evidence already obtained.

I have no recollection that the matter of field investigation was taken up with him although I am not certain on this point. Schwartz telegraphs me that the Forester Department has requested the postponement, and under all the circumstances I will recommend that their request be acquiesced in.

Am just in receipt of telegram from Schwartz as follows:

Well, that has no relation to this. Now, the point I want to bring to your mind on, Mr. Glavis, is that before Mr. Ballinger received your letter, he immediately replied to Mr. Dennett, to Mr. Dennett's telegram, that in view of his personal reluctance to direct the proceedings in the Alaska coal cases, he should direct Mr. Schwartz.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And if Mr. Dennett, this same gentleman, had not telegraphed Mr. Ballinger that he advised Schwartz to delay the issuing of the notices until Sheridan could examine the evidence?

Mr. GLAVIS. No, sir; he suggested advising—he suggested that Schwartz be advised.

Mr. VERTREES. Well, he says "I advise."

Mr. GLAVIS. No, sir; he didn't say "I advise"—yes, sir, he said "I advise."

Mr. VERTREES. Meaning that "I advise that Schwartz be telegraphed to," giving him authority to delay issuing notices?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is it, isn't it; that is the meaning of it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, in this same letter, which he wrote to you that day, does not Mr. Dennett say that it is both the opinion of Mr. Dennett and of Schwartz that you could safely go to trial on the evidence you had.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Meaning thereby to say your case, as he thought it was already proved? And was not he, the man who would direct the cases, writing that way about it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I will ask you, furthermore, if this is not true: That on the same date, July 23, 1909, page 716 of the Senate document, Mr. Dennett, being in Seattle, telegraphed Mr. Schwartz, who was acting assistant commissioner in Washington, that—

Secretary desires to refrain from any action in proceedings in Alaska coal cases. I authorize you to recommend to Acting Secretary Pierce to acquiesce in request of Forestry not to set cases for hearing immediately.

And isn't that from Mr. Dennett?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And yet you say in all this you see a disposition on his part to not do his official duty?

Mr. GLAVIS. Yes, sir; because, ordinarily, in fact in all cases where hearings are had, actions taken for hearings before the commissioner, the commissioner passes upon these points. I never heard, in my connection with the Interior Department, where it was necessary to personally secure the permission of the Secretary to have the commissioner take such action as he deemed proper to take.

Mr. VERTREES. Well, now, Mr. Glavis, that isn't the question.

Mr. BRANDEIS. Why not, Mr. Vertrees?

Mr. VERTREES. I didn't ask him what was necessary or unnecessary under the rules and regulations. I want him to answer this point, how from these telegrams and these letters he proposed to draw the inference, therefore, that Mr. Dennett was—

Mr. BRANDEIS. Well, wasn't he?

Mr. VERTREES. That Mr. Dennett was derelict in his duty.

Mr. GLAVIS. I didn't say—

Mr. BRANDEIS. Perhaps you did not hear his answer, Mr. Vertrees.

Mr. VERTREES. Perhaps not.

Mr. GLAVIS. Read the answer, please.

(The stenographer reads answer as follows:)

Yes, sir; because ordinarily, in fact in all cases where hearings are had, actions taken for hearings before the commissioner, the commissioner passes upon these points. I never heard, in my connection with the Interior Department, where it was necessary to personally secure the permission of the Secretary to have the commissioner take such action as he deemed proper to take.

And it therefore indicated to me that Mr. Ballinger was personally directing the conduct of those Alaska coal hearings, the Cunningham cases.

Mr. VERTREES. From the fact that he wired Mr. Ballinger, and Mr. Ballinger refused to act, and told you to call upon Mr. Schwartz and you thereupon did call on Mr. Schwartz—from that you drew the inference that Mr. Ballinger was really directing the investigation of the coal cases.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Is not that your answer?

Mr. GLAVIS. No, sir; because the telegram of July 22, on page 74, shows that Mr. Dennett had a talk in Seattle with Judge Ballinger upon these very cases a few days before, and the letter of July 23, 1909, on the same page, written by Mr. Dennett to Secretary Ballinger, states that he had telegraphed him yesterday advising authorization not to set the Cunningham cases immediately.

Mr. VERTREES. Don't you know—

Mr. BRANDEIS. One moment.

Mr. GLAVIS. It is evident also—I have never seen the telegram the letter—I would just like to refer to those letters.

Mr. BRANDEIS. Which letter is it, Mr. Glavis?

Mr. GLAVIS. In which—let's see—the letter of July 23, 1909.

The CHAIRMAN. What page?

Mr. GLAVIS. Page 74 shows that Mr. Schwartz had telegraphed Mr. Dennett, and in view of the action taken by Mr. Dennett telegram of July 22 to Mr. Ballinger, and the letter of July 23, Mr. Ballinger, indicates that Mr. Schwartz also suggested the postponement of the hearing. There is another letter, I think it is Mr. Schwartz, in which he suggests that consent be secured from the Interior Department to have this postponement. I can not refer to it right now.

Mr. VERTREES. Now, Mr. Glavis, that answer makes it necessary for me to repeat somewhat of what we have gone over. I think, for me to repeat somewhat of what we have gone over and persist in going back to it—I will go over it again and I trust this will be final. Isn't this the truth of the matter, that on July 22, Mr. Dennett telegraphed Mr. Ballinger that he advised Mr. Schwartz authorizing him to delay the issuance of notices in the cases until Sheridan could examine the evidence?

Mr. GLAVIS. The telegram, I think, speaks for itself.

Mr. VERTREES. I know it does. I am asking you now if that is not what it speaks; if that isn't the substance of it?

Mr. GLAVIS. Yes, sir; practically.

Mr. VERTREES. Well, that is what it says, doesn't it, in substance?

Mr. GLAVIS. I think it does.

Mr. VERTREES. Well, now, the very next day he wrote the telegram that you speak of to Judge Ballinger, didn't he, in which he explained why he had telegraphed, and in which he stated that both Mr. Ballinger and himself were of the opinion that he could go to trial on the cases already obtained (p. 74, S. Doc.). Now, then, Mr. Dennett, Commissioner, wrote to Mr. Ballinger, the Secretary, up at Boise, Idaho, but on that same day, responding to a telegram, didn't Mr. Ballinger reply to Mr. Dennett that "considering his personal convenience to direct the proceedings in the Alaska coal cases, you should make the necessary directions to Mr. Schwartz"—that is correct, isn't it—on page 74 of the Senate document?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, in reply to Mr. Dennett's letter to Mr. Ballinger, didn't Mr. Ballinger, on the 25th, the letter being dated July 23d, reply as follows; or, rather, didn't he write a letter to Mr. Schwartz—

I am just advised by Commissioner Dennett of your telegram in reference to the increase in the number of special agents of the excepted class—

And so on?

Mr. BRANDEIS. Hadn't you better read "and so on?"

Mr. GRAHAM. I want the "so on."

Mr. VERTREES. I must object to that, because the "so on" has no not the least relation to this case.

Mr. BRANDEIS. I think it has a good deal of relation to the case.

Mr. OLMSTED. I think, Mr. Chairman, when a gentleman is questioning a witness and reading from a document he has the right

read only such parts of the document as he desires to. This whole document is in evidence here.

The CHAIRMAN. Certainly. I think that is strictly in order.

Mr. VERTREES (reading):

I desire that you, in making any of these appointments, in addition to the President being consulted, General Hitchcock be also consulted, provided the appointees are not directly suggested by the President.

Now that is the "and so on," and you see it has not the slightest relation to this question.

Now, what I was coming to was this [reading]:

The commissioner also advises me regarding the action of Chief of Field Division Glavis respecting the hearing on Alaska coal cases. As I have heretofore declined to make any direction regarding the disposition of these cases on account of having advised some of the parties in reference thereto prior to my appointment as Secretary, I do not wish in any way to be drawn into the matter, and have so advised Mr. Dennett. What I have insisted on in this connection was that the Alaska coal cases be taken up and a prompt disposition be made of them by the department, as they have been hanging fire for several years. I advised Mr. Dennett, in general, in Seattle, as to this phase of the matter. Immediately on his return I wish you would take this subject up with him. It will probably be necessary to appeal to Congress for additional legislation before this matter can be entirely cleaned up.

Now, that is the letter you refer to, isn't it, Mr. Glavis?

The CHAIRMAN. What is the answer? I haven't heard any answer to that.

Mr. VERTREES. I say, that is the letter you referred to awhile ago?

Mr. GLAVIS. I referred to so many letters I don't know which one you refer to by that question.

Mr. VERTREES. I will ask you if I have not read these telegrams and letters in their proper order here so as to bring out what the parties are talking about, you will admit that?

Mr. GLAVIS. Yes, sir; you have read some of the letters.

Mr. VERTREES. Now, I will ask you to go to page 48 of the Senate document.

Senator FLETCHER. Let me inquire just at that point. Do you know when it was first determined that the commissioner would hear these cases rather than the Juneau office, in the first instance?

Mr. GLAVIS. I think it was about June 30 that I was advised by telegram, or it was July 16, or July 8.

The CHAIRMAN. Of what year?

Mr. GLAVIS. The telegram isn't here that shows that.

The CHAIRMAN. Of what year?

Mr. GLAVIS. 1909.

Senator FLETCHER. I think you had better refer to that telegram now if you can?

Mr. VERTREES. On page 517 of the Senate document appears a letter to the commissioner—there is a letter dated June 29, 1909, to Mr. Frank Pierce, Acting Secretary, to the Commissioner of the General Land Office, which, among other things, says, if hearings be ordered—

I have to direct that you instruct the chief of field division, if hearings be ordered, to endeavor to secure the defendant's stipulations for the taking of the evidence before qualified officers, to be designated by the Commissioner of the General Land Office, at or near the residences of the respective witnesses, the stipulation also to contain the

provision that the evidence, when taken shall be forwarded by such officers directly to the Commissioner of the General Land Office, the record to be considered by him when made up, without reference to the local land office in Alaska. This will be a very material saving of time, and it is believed that the defendants will be glad to consent thereto.

Mr. GLAVIS. The telegram, Senator, I referred to is dated July 29, 1909.

The CHAIRMAN. What page?

Mr. GLAVIS. Page 522 of the Senate document. This is a telegram from Acting Assistant Commissioner Schwartz to Special Agent Eniry, at Denver, Colo., and states:

Direct Special Agent Sheridan proceed at once to Glavis and familiarize him with Cunningham coal case and assist Glavis in taking testimony before commission to be appointed. Testimony will be taken from Seattle to New York.

There is a letter, page 521, also, Senator, which is dated July 29, 1909, signed by Acting Assistant Commissioner H. H. Schwartz, written to Miles C. Moore, Walla Walla, Wash., which also refers to the taking of testimony, and the decision to be made in the instant case by the Commissioner of the General Land Office.

Mr. MADISON. But the order requiring the cases to be tried orally before the commissioner, rather than before the register or receiver of the Juneau land office, is the order of Mr. Pierce, Acting Secretary, on page 517. That was read by Mr. Vertrees.

That order would have to come from the Secretary's office, wouldn't it; the commissioner himself wouldn't take original jurisdiction on his own action, but it would be made by the Secretary, wouldn't it?

Mr. GLAVIS. Well, now, I am inclined to believe that for him to have taken such an action as that, which is not in accordance with the rules of practice, I believe it would require the consent of the Interior Department, but I am not sure about it.

Mr. OLMSTED. What do you mean by the consent of the Interior Department?

Mr. GLAVIS. I mean the Secretary or the Assistant Secretary.

Mr. OLMSTED. The head of the department?

Mr. GLAVIS. Yes, sir; the head.

The CHAIRMAN. This letter of the Assistant Secretary, Mr. Pierce, of July 29, is not an order? It is simply a suggestion that a stipulation be secured?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. To pursue that course; that is, to take the testimony before commissioners and bring the hearing on before the Commissioner of the General Land Office. It is simply a suggestion that such a stipulation be secured; that is all there is in that.

Mr. VERTREES. Mr. Glavis, I wish now to call your attention to two other letters, which appear on pages 48 and 49 of Senate Document 248.

Mr. BRANDEIS. What letter is that?

Mr. VERTREES. It is a letter of Mr. Dennett to Mr. Schwartz. Both of them appear on pages 48 and 49 of the Senate document.

Mr. BRANDEIS. I think you will find that in the record.

Mr. VERTREES. There is one on page 281. Now, Mr. Glavis, dealing with Mr. Dennett, who was commissioner, and was the one who would eventually try all these cases, the way the matter was tried—all; indeed, would do it anyhow under appeal, I would ask if on the 22d of July—

Mr. BRANDEIS. You will find that on page 343 of the testimony.

Mr. VERTREES. I call your attention especially to that letter and will ask you if in that letter Mr. Dennett, the gentleman about whom we are inquiring, the commissioner, does not say this to Mr. Schwartz, the acting commissioner, Mr. Dennett, being then at Seattle, Wash.? I read from the letter of Mr. Dennett of July 22, 1909, as follows:

I will wait here until Sheridan arrives. Wired you this morning on the situation; also wired Ballinger in accordance with your decision. The little hitch ought never to have arisen. Sheridan is a first-class man and probably has had more experience in trying coal cases than anyone in the service. The wire I sent the judge was that if Sheridan thinks more time necessary we will have to grant it, but it seems to me that November is putting the matter off rather long. If they were trying to come under the new law I would not say that, but as they are trying to come under the old law they have elected to stand without any hope, not receiving any compensation if the law should be changed.

Did he not write that letter and have you not already put it into the record as a letter written by him?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. As expressive of Mr. Dennett's views and position with reference to these same claims. Did he not also in a letter—that is, Mr. Dennett, the commissioner—written from Seattle, July 27, 1909, to Mr. Schwartz, acting assistant commissioner, and which is to be found on page 49 of Senate Document 248, on page 281 of the record, among other things say this:

Sheridan has taken charge of the Cunningham cases, and impresses me very favorably. I think he can handle it against any rival they may bring against him. The rest of the Alaska cases are in a bad mess. Glavis is very much enthused on the proposition of canceling them all and getting the lands back in cold storage, and this is just about what will happen unless Congress helps out.

Did he write that letter?

Mr. GLAVIS. Yes, sir. It is one of the copies that was given me by Mr. Spalding.

Mr. GRAHAM. Mr. Glavis, when did a knowledge of the complications about the Alaska coal lands reach the Agricultural Department first?

Mr. GLAVIS. The first information that I know of that reached them was my telegram that I sent to Mr. A. C. Shaw, of the Forestry Service, on July 16, 1909. Two or three nights before that telegram was sent I spoke to Mr. Allen, who was then in the Forestry Service, the district forester having charge of the Alaska work as well as the work in Portland and western Washington, but he did not notify the Land Office by wire, and I do not know whether he notified them at all.

Mr. BRANDEIS. Do you mean Land Office or Forestry Service?

Mr. GLAVIS. I mean Forestry Service.

The CHAIRMAN. Will you please suspend a moment, Mr. Vertrees, and see if that letter [indicating] to the Secretary covers the call that you made this morning.

Mr. VERTREES. What is Miss Shortell's name?

Mr. GLAVIS. Her name is Ellen M. Shortell.

Mr. VERTREES. Mr. Chairman, we will amend our request by including the name of Miss Shortell, who is a stenographer.

The CHAIRMAN. Very well.

Mr. BRANDEIS. Mr. Chairman, at the same time that these subpoenas are going out to Seattle, we would like to have Mr. W. W.

Barr and Special Agent Spalding subpoenaed also. He is at Se
Mr. Spalding is still in the service, is he not, Mr. Glavis?

Mr. GLAVIS. Yes, sir; he is at Cheyenne, Wyo. His name is Frank L. Spalding.

Mr. GRAHAM. Is that a sufficient description? Are there any other Spaldings in the service?

Mr. GLAVIS. No; this is Frank L. Spalding.

Mr. BRANDEIS. He is special agent.

The CHAIRMAN. Very well; we will have them sent for. Very well, you may proceed.

Mr. VERTREES. Mr. Glavis, what were the expressions toward you by Mr. Dennett; I mean with reference to his appreciation of your services at various times?

Mr. GLAVIS. I think we have been friendly.

Mr. VERTREES. On June 3, 1908, did he not write to you when you were in Portland, among other things, as follows, and I read page 494 of the Senate Document 248:

The General Land Office and the Department appreciate the very thorough and efficient manner in which you conducted your investigation in reference to the situation in the Alaska coal matters. It was largely by your report of fact that this office was enabled to prove by the record what are the necessities of the coal fields and what were the various efforts to unlawfully acquire title to such lands.

Very respectfully,

(Signed) FRED DENNETT,
Commissioner

GVF.

Mr. GLAVIS. Yes, sir; I remember receiving that.

Mr. VERTREES. I will ask you if, on October 7, 1908—and I read from Senate document, page 503—Mr. Schwartz, acting assistant commissioner, did not write to you at Portland, Oreg., among other things, that—

The reports as made by you to this office show that these applications were fraudulent, and should be canceled. Proceedings will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the government case in the hearing.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I call your attention to a communication from Mr. Schwartz, chief of the field division, to Mr. McEniry, chief of the division at Denver, which is on page 519 of Senate Document 248, in which he says:

I am at this time looking for a competent attorney to sit in the cases and advise the Field Division Glavis. Mr. Glavis is an especially competent man, and the situation of assigning assistant counsel to him in these cases is at his request.

Please consider whether Mr. Sheridan will be available for such service within the next sixty days; and, if so, deliver to him the attached copy of an opinion of the Attorney-General, and have him generally prepare himself to conduct hearings on the charge is that entries were made either as "dummies," or under a previous agreement for an unlawful association.

That is correct, is it not, Mr. Glavis?

Mr. GLAVIS. What, the letter that you have just read?

Mr. VERTREES. Yes.

Mr. GLAVIS. The only letter that I saw is this letter on the subject of that you have read. I never saw the original letter.

Mr. VERTREES. Well, you saw that, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I now call your attention to a letter of Mr. Schwartz, acting assistant commissioner, to be found on page 527 of Senate Document 248, in which he says:

document, dated July 21, 1909, to Mr. James Sheridan, special agent, Denver, Colo., a very long letter stating the situation, but in which, among other things, he says, on page 529:

Every report received from Mr. Glavis in this case concludes with some statement or observation as to what future and further investigation will develop, and leaves the report in a status which precludes this office from taking any action; and he has been advised from time to time it is the purpose and intention of this office that there shall be full and complete investigation and advice prior to the final action upon these entries. It is likewise the intention of this office that these proceedings shall come to a close, and that these entries now under investigation for a period of two or three years shall either be canceled or patented. The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries, and has given to them, his best efforts. At the same time, the proper and expeditious determination of the field investigations at present devolve primarily upon myself, and I am responsible for the result. It was with this matter in mind that my letter of October 7, 1908, was addressed to him, and that my wire of April 20, 1909, was sent, informing him that the cases should come to conclusion, so far as the investigation was concerned, within sixty days, and that he might call for whatever agents he might require; and he was likewise—and has been—authorized to incur whatever expense may be necessary in these investigations. Notwithstanding the explicit instructions contained in my telegram of April 20, 1909, and the different instructions in reference to the Cunningham case, Mr. Glavis in his letter of July 8, 1909, says that:

"Since the submission of my report of March 23, there has been no evidence secured in this group of entries, for the reason that the time allowed in which to make these investigations has been too short to complete the same," etc.

Notwithstanding Mr. Glavis's statement, the record shows that he had at his disposal the entire field force; and he also had explicit notice that I had pledged the entire field force of the department for a report in these cases at a certain time. He has failed, however and the report can not be made.

You have been placed in charge of the Cunningham group of Alaska coal cases for the express purpose of properly completing the investigation speedily; and thereafter to conduct the hearings upon which the Government will endeavor to cancel the claims. Enough of the record has been recited to advise you that *I expect this result to be accomplished.*

You are advised now, as Mr. Glavis was advised heretofore, that you may call upon me for whatever assistance, to the extent of the field force and the funds available, you may require. If it is a matter of interviewing further entrymen, you should call for a sufficient number of agents to make these interviews *at once*. It is my opinion, however, that Mr. Glavis and his agents have curried this group of cases thoroughly, but as to that I defer to the opinion of yourself after you shall have gone through the record and conferred with Mr. Glavis. In so far as the proper completion of the Cunningham group of cases may require it, you are authorized to call upon Mr. Glavis for any personal assistance, including his own services.

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

That is correct, is it not, Mr. Glavis?

Mr. GLAVIS. The letter? A copy of that letter was sent to me also.

Mr. VERTREES. You received a copy of that letter?

Mr. GLAVIS. I gave my copy to Mr. Sheridan before the original was received and before he made his report to Mr. Schwartz concurring in my opinion that the cases should be continued until we made the field examination.

Mr. VERTREES. Mr. Glavis, can you turn to your evidence, which you corrected on yesterday, as to your first knowledge or notice as to when Mr. Sheridan was coming. You referred to it yesterday.

Mr. GLAVIS. I have not yesterday's testimony at hand, Mr. Vertrees.

The CHAIRMAN. If it is agreeable to you, Mr. Vertrees, we will now take a recess until 2 o'clock.

(Accordingly, at 12 o'clock and 30 minutes p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

Louis R. Glavis resumed the stand for further cross-examination.

The CHAIRMAN. Mr. Glavis, you will please take the stand, and Mr. Vertrees will proceed with his examination.

Mr. VERTREES. Mr. Glavis, please refer to page 258 of your evidence, in the fourth answer from the bottom on page 258. As I have the answer as you corrected it on yesterday, it reads as follows:

It was not determined that there would not be any hearing until after the field examination until July 24 or 26, and this was July 16, and at that time it was not intended that they would proceed at once with the hearing.

Is that correct as I have read it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What do you mean by "proceed at once with the hearing," Mr. Glavis?

Mr. GLAVIS. Oh, proceed with the hearing just as soon as we could regularly. I do not mean the next day, but just in the course—

Mr. VERTREES. What I am asking you to define is what you mean by "hearing;" what is the "hearing?"

Mr. GLAVIS. The hearing was the taking of the testimony in the case between the Government and the Cunningham coal claimants.

Mr. VERTREES. How do you mean, the trial upon the evidence after it was taken; do you mean the taking of the evidence?

Mr. GLAVIS. Yes; a hearing and a trial are practically the same thing—that is, we always considered them so—a hearing before the register or receiver or some officer designated by them to take the testimony.

Mr. VERTREES. You were notified, though, that the evidence taken in Alaska should be in before what you now describe as the hearing should be concluded, were you not?

Mr. GLAVIS. I think it was before July 16 that I received that information, or it might not have been until I received a copy of that letter written by Mr. Schwartz to Mr. Sheridan. I do not recall now, but I think it was before.

Mr. VERTREES. I am not so much interested in the time when you received it as the nature of the communication.

Mr. GLAVIS. Yes, sir; I remember that.

Mr. VERTREES. You were informed, were you not, that the result of that investigation being made in Alaska would go into the record before concluding the hearing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You understood that that evidence should be in before there was any attempt to decide the matter, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Please look at page 516 of the Senate document, the third telegram from the bottom; there is one from Mr. Schwartz, chief, dated June 29, 1909, to you at Seattle, and informing you that—

Cunningham group elect to stand on old law. Immediate hearing will follow. Be prepared with your evidence.

SCHWARTZ, Chief Field Service.

Now, is "hearing" used there in the same sense in which you have used it?

Mr. GLAVIS. Yes, sir, "hearing" is.

Mr. VERTREES. What is meant by that?

Mr. GLAVIS. That at the time I received this telegram I had not information that they were going to wait until I finished my field examination.

Mr. VERTREES. That is not my question at all. He says there, "immediate hearing will follow. Be prepared with your evidence." I asked you if "hearing" means the preparation of the case or the taking of the evidence as used there or not?

Mr. GLAVIS. It means the trial, or the taking of the evidence.

Mr. VERTREES. It means not the trial but the taking of the evidence.

Mr. GLAVIS. Both are the same thing—the trial which takes the evidence, and the hearing is the taking of evidence before somebody to determine the case after the evidence is taken.

Mr. VERTREES. While the trial was to be before the commissioner, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But I mean the Commissioner of the Land Office, Mr. Dennett.

Mr. GLAVIS. Well, the trial is before the commissioner in this particular case, as I would term it; it was when the testimony was taken before the commissioner designated by Mr. Dennett.

Mr. VERTREES. You mean a commissioner to take evidence?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is what you mean by "commissioner?"

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, when he tells you to be prepared with your evidence does he mean prepared with your witnesses to go before a commissioner and have them examined?

Mr. GLAVIS. Yes.

Mr. GRAHAM. Let me ask you a question, Mr. Vertrees. I do not understand one of the other of you, I am not sure which. Would the commissioner you speak of hear the evidence and decide the case, or would he simply hear the evidence without deciding the case?

Mr. GLAVIS. He would merely hear the evidence without deciding the case, and the evidence would then be submitted to the Commissioner of the General Land Office for decision.

Mr. GRAHAM. With or without report from the other commissioner?

Mr. GLAVIS. I think without a report.

Mr. JAMES. It is like taking depositions before a notary.

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Instead of hearing the evidence he takes the evidence—takes it down and reports it.

Mr. GLAVIS. Yes, sir. It is just the same proceeding as a civil action in the United States court before a referee.

Mr. GRAHAM. I do not know whether Mr. Vertrees was informed, or was not here when the fact came out, but Mr. Glavis is not a lawyer; he is not an attorney, and many of these terms that are familiar to you and me are not understood by him as they are by us.

Mr. VERTREES. I was not. I labored under the impression—

The CHAIRMAN. One is a commissioner to take testimony and the other is the Commissioner of the General Land Office.

Mr. McCALL. I think Mr. Glavis stated it very clearly and stood that.

Senator PURCELL. Yes; he said it was like taking depositions before a referee.

Mr. VERTREES. You were either informed that the hearing taking of the evidence would follow and to be prepared with evidence, and were to go ahead.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You replied the following day by telegram appears on the same page, with an inquiry, as follows:

Is it necessary to submit report on Cunningham group?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And on the next day, June 30, Mr. Schwartz replied to you, as follows:

Yes; submit Cunningham reports. Notice of charges will be prepared here may suggest form in your report if you desire.

That is correct, is it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, did you not—as appears on page 5 the 29th, the same day when he informed you that it was necessary to go ahead—did you not say to him by wire:

Respectfully recommend that Agent Jones be directed to remain here on his evidence and knowledge Cunningham group very important.

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Has that cipher “cedeg” any meaning applicable?

Mr. GLAVIS. It means “answer by wire,” I think, or “answer wire quick,” one of the two.

Mr. VERTREES. At the bottom of page 517, Mr. Schwartz

Send Jones to Portland this week in accordance with our understanding Cunningham or other group is set for trial you may subpoena him. Please direct efforts to secure agents and employees from Portland.

Mr. GLAVIS. Yes, sir; I remember receiving that telegram.

Mr. VERTREES. Now, under this definite direction there to proceed to go on at once, and telling you what to do, you replied, as appears at the bottom of page 518, that you would forward the Cunningham report to-morrow containing unfavorable recommendations, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, was there any statement up to that time that the evidence was incomplete—did you insist on anything of that sort?

Mr. GLAVIS. Why, they already knew that; they knew the necessity for the field investigation. We had discussed that a number of times.

Mr. VERTREES. So a field examination had been agreed upon previous to that time, had it?

Mr. GLAVIS. Before the hearing was to be had?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir; it was the first knowledge that I had that they were going to proceed immediately with the trial of the

ningham cases before this field examination was had; that was the telegram of July 29, 1909, that they were to proceed with the immediate hearing.

Mr. VERTREES. Now, you wired back, did you not, on the 30th that new phases developed as investigation progressed and that you could not consistently make final report while further evidence was available—there is a cipher there that means “evidence,” does it not?

Mr. GRAHAM. Where is that?

Senator PURCELL. It is at the top of page 519.

Mr. GLAVIS. Yes, sir; I thought you were going to finish reading it, because I would like to explain that a little more fully.

Mr. VERTREES. Surely, if you want to explain it, you may.

Mr. GLAVIS. It also says “Cunningham group included.”

The telegram in full is:

Valuable evidence Alaska coal cases still being secured. New phases developed as investigation progresses. Can not consistently make final report while further evidence is available. Cunningham group included. Time should be extended at least sixty days longer.

That included not only, which I specifically mentioned, the Cunningham group, in that report, but it included all the Alaska coal cases; and under instructions in the telegram of April I was directed to complete my investigations within sixty days.

Mr. JAMES. On all of the cases?

Mr. GLAVIS. Yes, sir; on all the Alaska coal cases.

Mr. JAMES. How many were under investigation then?

Mr. GLAVIS. About eight or nine hundred.

Mr. VERTREES. Then why did you not say that your report was just incomplete instead of wiring back about Jones, and all that, if that was the difficulty?

Mr. GLAVIS. I wanted Jones there to help me continue the investigations.

Mr. VERTREES. Were your instructions to investigate everything before you reported?

Mr. GLAVIS. Yes, sir; my instructions in April were that the Alaska coal investigations were to be completed within sixty days. Nothing was specified as to any particular group at all at the time.

Mr. VERTREES. What I want to know, Mr. Glavis, is as to your instructions when you went up there.

Mr. GLAVIS. When I went where?

Mr. VERTREES. To report on a particular group or to report on all the groups?

Mr. GLAVIS. When?

Mr. VERTREES. When you went up to investigate the Alaska claims.

Mr. GLAVIS. Do you mean the field examinations?

Mr. VERTREES. Yes.

Mr. GLAVIS. My instructions were—

Mr. VERTREES. No; I do not mean the field examinations; I mean when you went up there to investigate the Alaska claims in December, 1907, when you came down here and received instructions.

Mr. GLAVIS. They were to investigate all the Alaska cases.

Mr. VERTREES. But I asked with reference to your report you to report on groups or make a general report finally as them?

Mr. GLAVIS. To make a report on groups as my evidence in particular group was completed.

Mr. VERTREES. Now, did you do that?

Mr. GLAVIS. I made some reports in June or July, 1909, which were practically complete, but I stated, as I recall that now, that the field investigations and the men that I had in Alaska at that time might develop other evidence, and therefore until they reported that the adverse proceedings should not be taken.

Mr. VERTREES. On page 154 of the record you were questioned and made answer as follows—

Mr. BRANDEIS. You mean page 154 of the testimony?

Mr. VERTREES. Yes; I said the record.

Mr. BRANDEIS. Was there any reason, from the point of view of protection of Government's interest, why you did not want to bring one case to trial and before the other and get a decision on it before the others were ready?

Mr. GLAVIS. Oh, yes, sir; we wanted to finish our investigation of all the groups before any hearings were brought in in any particular one for the reason that there was a good deal of jealousy among the various coal claimants, and there was a deal of talk that one was going to be shown more partiality than another, and they were getting so that they were talking among themselves, to a certain extent, and wanted to see them fight among themselves. In fact, by some of them fighting among themselves, one would tell on one and the other on the other. I think that was indicated by Harriman's letter.

Now, did you not mean to convey the impression there that the manner of investigation was to get all the evidence before you and then proceed to make reports sufficient to bring on anyone?

Mr. GLAVIS. No, sir; none of my reports in June or July were recommended, as I recall them, to notify the coal claimants that adverse reports had been made until the agents had returned from their work in Alaska. At the time of their returning from Alaska the evidence would be complete in all cases.

Mr. VERTREES. Well, what I wish to know, Mr. Glavis, is the meaning of that answer. Does it mean that your programme or plan was for reasons which you deemed good and satisfactory, to finish the investigation of all the groups up there before you brought them to hearing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And there were quite a number, were there?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You stated just above there that there were six or seven hundred more applications in regard to coal claims which you could get in various parts of the United States. And you were then asked by Mr. Brandeis:

Why was it that you did not finish up one case and then go to the next? you keep them all going at the same time?

And you answered to that:

Well, my idea was to investigate them and see all the people in that city at one time, otherwise I would just see those in a separate group at one time, and it would take years to finish the work and cost the Government thousands of dollars, while seeing all the people in one city we made much better headway with the investigation and also did not give them an opportunity to talk among themselves so much.

Then you made the other answer that I have read. As I understand you there, you mean to say that your programme and your policy in conducting these investigations or hearings, or in taking this evidence, was to endeavor to work them all up at the same time as a matter of precaution, and not report or bring any one on to hearing before you did another?

Mr. GLAVIS. Yes, sir; and also on account of the economy of time.

Mr. VERTREES. You are now giving the reasons. I am asking you as to the fact. Was that the fact?

Mr. GLAVIS. That was the fact.

Mr. VERTREES. That is what you were doing—doing it that way, working them all up at the same time?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And before you were intending to bring on any one to a hearing. Now in view of the large number that were there, would not that take an extraordinary time?

Mr. GLAVIS. Do you mean in investigating in the manner in which I was doing it?

Mr. VERTREES. Yes, all of them.

Mr. GLAVIS. No, sir; all the coal claimants, as a whole, would have had their hearings and their cases disposed of earlier than if I had taken one up at a time. Also, the Government was saved a great deal of additional expense because, as I have stated, some of the claimants, in some of the groups were all over the United States, and if we had had to make a trip every time we investigated one group and did not investigate some other group, then—

Mr. VERTREES. Was that—

Mr. GLAVIS. I had not finished, Mr. Vertrees. Then it would take an indefinite time to do it, and would be adding for each trip to that expense of the Government.

Mr. VERTREES. Well, without the reason now, we will get to them presently. What I want to know is if that is not the way you were proceeding, taking the evidence of all of them, sweeping them all before you reported on any, or brought any of them to a hearing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that was the cause; and now I will come to the reason—you regarded that as sensible and economical?

Mr. GLAVIS. Yes, sir; and for the additional reason, as stated on page 54, that as a matter of fact I could not make complete reports on any of the cases until in the fall of 1909, and at that time I was stopped making reports on all of them.

Mr. VERTREES. Was not your course of procedure often directly the opposite to your orders, and was that not the trouble, that you were doing it that way when you had been ordered to do it differently?

Mr. GLAVIS. No, sir; I did not so construe my orders.

Mr. VERTREES. Now look at page 332 of your evidence, and you will see that there is a letter, which begins on page 331 of the evidence, from Mr. Ballinger, addressed to Mr. Glavis at Portland, Oreg., giving him instructions, and the concluding sentence of that letter of instructions is:

You will from time to time, as rapidly as possible, make separate reports upon individual entries, or separate groups of entries, to the end that action may be taken without further delay.

Mr. BRANDEIS. The date of that letter is December 28, 1907.

Mr. VERTREES. Yes; when he was sent there specially. Now on page 503 of Senate document and you will observe that appears a letter from Mr. Schwartz, acting assistant commissioner, dated October 7, 1908, and written to you as chief of the field at Portland, Oreg., in which, among other things, he says:

You are directed to complete your investigation along the original line, prepare the Government's case as to be able to present all the facts at a hearing, the event you finally make adverse report and ask for the cancellation of these applications.

This office has been informally advised that the various entrymen, known as "Cunningham group," have concluded to stand upon the old law and ask for the now pending applications. The reports as made by you to this office that these applications were fraudulent and should be canceled. Proceeding will be deferred, however, until such time as you advise this office that you have completed your investigations and are ready to sustain the Government's case in the hearing.

Now there is a confirmation there on October 7, 1908, specific instructions which had been given you in the latter part of 1907, is there not?

Mr. BRANDEIS. What is the question?

Mr. GRAHAM. There has been no question as yet.

Mr. VERTREES. I said "is there not." That is a question.

Mr. GRAHAM. I did not hear that.

Mr. GLAVIS. The first letter of December 28, 1907, in which that you have quoted refers to the making of my reports when I had completed the investigations I was making. The letter itself does not state in any part of it that I am to make a complete investigation of one particular group before taking up another group. It is a statement merely to make a report when I had completed my investigation in a particular group.

Mr. VERTREES. Does it not say to you in terms specifically that you will from time to time and as rapidly as possible make separate reports on individual entries or separate groups of entries to the end that that action may be taken without further delay?

Mr. GLAVIS. Yes, sir; that states that, but it leaves to me the discretion the proper manner of proceeding with those investigations and it speaks of the investigations of the entire Alaska coal cases as to any particular group.

Mr. VERTREES. You interpreted that, did you, that you would report as you pleased about it; that is to say, not report them separately but wait until you could report them all?

Mr. GLAVIS. No, sir; I did not mean that. The letter is very clear that when I am prepared to make a report on a separate investigation of individual entries that I am to do that, and I so interpreted the instructions to mean that; but I did not interpret the instructions to mean that I was to confine myself solely to an investigation of one group before taking up any other groups.

Mr. VERTREES. What was meant, then, by the statement that the action should be done to the end that action might be taken without further delay? What did that mean?

Mr. GLAVIS. That would mean what it says as to the report, that it does not refer to my investigation.

Mr. VERTREES. Would there not be delay of a very grievous character if you waited until they were all examined and reported on in the way you stated awhile ago you were doing it?

Mr. GLAVIS. I never completed any particular investigation. That was my idea, but at the same time I had never had the opportunity to complete any investigations.

The CHAIRMAN. It strikes me that you do not answer the question.

Mr. BRANDEIS. Please read the question.

(The reporter reads as follows:)

Would there not be delay of a very grievous character if you waited until they were all examined and reported upon in the way you stated awhile ago you were doing it?

Mr. GLAVIS. Yes, sir; it would delay some of them.

Mr. VERTREES. And you were doing it that way, were you not?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Didn't you say to the committee just a moment ago that you were proceeding along this way because you regarded it as economical and better to take them all in?

Mr. GLAVIS. You are speaking of my investigation and I am speaking of the making of reports.

Mr. VERTREES. The report, of course, was to be made, upon the investigation. You would have to make an investigation in order to report, would you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Is not that what they were calling for—when they called for a report it necessarily implied an investigation, did it not?

Mr. GLAVIS. Of all the cases. And my instructions were to investigate all the Alaska coal cases, but to make separate reports upon separate groups of entries and individual entries whenever I was able to do so.

Mr. VERTREES. That is what you say these two orders mean?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you interpreted them that they gave you permission to investigate all before you reported on any?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you thought it was prudent not to bring on any hearing?

Mr. GLAVIS. It does not say anything about that part of it.

Mr. VERTREES. Was it not that very course of procedure on your part, doing it that way, that brought up the pressure that was put on you, the persistent pressure to report in these Cunningham cases?

Mr. GLAVIS. No, sir; decidedly not.

Mr. VERTREES. Decidedly not?

Mr. GLAVIS. They had copies. They had all the special agents' reports; they knew what we were doing and what different groups were being investigated, and they had also known both from personal statements made by me to Mr. Schwartz and Mr. Dennett and the reports I had submitted that we were making a general investigation of the cases wherever we found the claimants to be, whether they were in one group or another.

Mr. VERTREES. But at the same time were they not all the time insisting positively and frequently upon and urging a report in the Cunningham group?

Mr. GLAVIS. Yes, sir; they urged that in June—on June 29, 1909.

The CHAIRMAN. I would like to ask a question or two for my own information. You have spoken of about 800 or 900 Alaska coal

claims. Now, what proportion of those claims had gone to what we call final entry in the office?

Mr. GLAVIS. I do not think there were more than 40 or 50.

The CHAIRMAN. Forty or 50 that had gone to final entry in the Juneau office?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And in this 40 or 50 were the 33 Cunningham claims?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that there were not over 10 or a dozen outside those Cunningham claims that had gone to final entry?

Mr. GLAVIS. No, sir; and there might not have been quite that many; I do not recollect.

The CHAIRMAN. Do you recall any beyond the Cunningham claims?

Mr. GLAVIS. Oh, yes; I remember there were a few others.

The CHAIRMAN. How many, approximately?

Mr. GLAVIS. As I say, probably about ten or twelve; it might not have been that many.

The CHAIRMAN. That had gone to final entry?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Were not those classes of claims that had gone to final entry in a group by themselves, on account of the fact that they had gone to final entry; were they not distinguishable from the others where there had been no final entry?

Mr. GLAVIS. No; they had not received their certificate, but they had made payments for the land, is what I mean.

The CHAIRMAN. Yes.

Mr. GRAHAM. Will you straighten out a matter in my mind, if you please, if you can, Mr. Glavis? Did I understand you to say that you construed the instructions to mean that you were not to report in any case until you had completed the investigation in all the cases?

Mr. GLAVIS. No, sir; I did not consider my instructions to mean that.

Mr. GRAHAM. I understood you to say that in answer to a question by Judge Vertrees, and I wondered if I understood you rightly.

Mr. VERTREES. What did you say about that awhile ago in your testimony?

Mr. GLAVIS. My instructions as stated in detail——

Mr. VERTREES. Not your instructions, as to your course of procedure, the way you were doing. What did you tell the committee a few minutes ago as to the programme of procedure that you had adopted, when I asked you that question?

Mr. GLAVIS. As to the investigation or the making of my report?

Mr. VERTREES. Your investigation, I will say then.

Mr. GLAVIS. The plan I adopted in making my investigations was to investigate all the cases as a whole; that is, there were a lot of people in Seattle—there were probably in the State of Washington three or four hundred claims. They were in ten to twenty different groups of claims. Now, I investigated all of those groups that were found in any town, instead of confining myself to one group and coming back to that town later on, and confining myself to another group and doing that time after time until I had completed my investigation of a particular group.

Senator PURCELL. Can you refer us to your instructions? What part of the book is it?

Mr. GLAVIS. The first instructions that I received, the written instructions, were the ones on page 331.

The CHAIRMAN. Of the record.

Mr. GLAVIS. Three hundred and thirty-one of the evidence, of the testimony.

Senator PURCELL. That is the first that you received instructions?

Mr. GLAVIS. Yes, sir.

Senator PURCELL. In regard to the Alaska coal lands?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. From Mr. Ballinger?

Mr. GLAVIS. Yes, sir.

Senator PURCELL. Those were the first instructions from anyone?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Senator, there were some oral instructions given a few days before, ten days before.

Mr. VERTREES. The witness has said nothing about oral instructions.

Mr. BRANDEIS. The witness has stated that they were the first written instructions.

Mr. VERTREES. Let him speak of that himself.

Those instructions are the instructions which I have already read, are they not?

Mr. GLAVIS. You only read the last paragraph. I think that in order to consider them, the other paragraphs of the letter should be taken into consideration.

Mr. VERTREES. Well, sir, what is there that qualifies that last paragraph in the letter of instructions?

Mr. GLAVIS (reading):

You are directed to take over the investigation of these alleged irregularities and take the action necessary in each instance to protect the interests of the Government in the Alaska land.

Mr. VERTREES. Well?

Mr. GLAVIS (reading):

The original charges that coal lands were being illegally acquired in Alaska were made to Special Agent H. K. Love, and on June 21, 1907, Special Agent Horace T. Jones was directed to make the necessary investigations in these cases. You have already been supplied with copies of the reports made by Special Agents Love and Jones and of the report of Chief of Field Division Colter as to the operations of certain Chicago parties.

Now, the reports of Special Agents Love and Jones, dated August 10 and August 13, will show that they conducted their investigations along the same lines that I conducted mine when given charge of them. That is, they would see some of the claimants and interview them in a town, whether they were in one group or another. The first paragraph of the letter which I have quoted left it to my discretion, I think, as to how to proceed to carry on the investigation. That had always been the custom heretofore or theretofore. I proceeded in that case in the same way.

Mr. VERTREES. As I understand you, in point of fact, the way you did conduct these examinations is this: You would go to a given place and examine all the claimants there, or all the claimants you could find?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then you would go to another place, and so on?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Conducting it that way until you got all the evidence you could get, or what you could get, and then you would report? You construed your instructions to permit that, did you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the instructions under which you acted were those contained in this letter of Mr. Ballinger to you, dated December 28, 1907, on page 331, and the instructions of Mr. Schwartz of January 7, 1908, contained in Senate document at page 503?

Mr. GLAVIS. I got another instruction relative to the Cunningham cases in February, 1908, advising me that those cases had been referred to me that they wanted me to proceed.

The CHAIRMAN. Can you turn to it?

Mr. GLAVIS. To complete my investigation in that case.

The CHAIRMAN. Turn to it so that we can get it; it will save the trouble of quoting it.

Mr. VERTREES. On page 465 of Senate document, Mr. Glavis.

The CHAIRMAN. What page?

Mr. VERTREES. Four hundred and sixty-five, I think is the one you want.

Mr. GLAVIS. Yes, sir; that is the one, dated February 5, 1908. I proceeded in accordance with that instruction I proceeded. I first made an investigation of the Cunningham cases. I secured evidence, while I was in the course of securing that evidence I received a telegram dated May 2 to discontinue, and I did not receive instruction to resume until October, 1908. Therefore the field examination that had to be made in the Cunningham cases could not be completed until the summer of 1909, so that I could not go over there to complete this evidence then. I could have secured a few affidavits, but I could not complete it until I had made this field examination.

Mr. VERTREES. Now, this letter you refer to of February 5, 1908, page 465 of Senate document, does it not show that they had been referred to you to the effect that you would report within a few months this Cunningham group, and then say:

This is not sufficient. The office feels that applicants to purchase coal lands in Alaska have, for reasons not in any way chargeable to you, already been considerably delayed.

You will, therefore, on receipt of this letter, proceed to Spokane and complete your investigation and make final report as to these claims.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, the letter of May, 1908. I believe you were the one that suspended operations on account of the appropriation.

Mr. GLAVIS. No; there was a telegram dated May 2, 1908, which was what suspended them.

Mr. VERTREES. Well, what was it; what did it contain?

Mr. GLAVIS. It is on page 99 of the list of documents prepared for the clerk of the committee.

Mr. VERTREES. What is the number at the head of it?

Mr. BRANDEIS. Two hundred and twenty-six and 228, Mr. VERTREES.

Mr. GLAVIS. It states to discontinue the investigation now being made of Alaska coal cases. Shall I read it?

Mr. VERTREES. No; that is sufficient. It is dated May 2, 1908. At that time Mr. Ballinger was not commissioner, was he?

Mr. GLAVIS. No, sir.

Mr. VERTREES. He was out of office?

Mr. GLAVIS. Yes, sir.

Senator PURCELL. What is the meaning of the word "clear-listed" as used in the telegram of February 5, 1908, at page 465? What do you mean by "clear-listed?"

Mr. GLAVIS. Well, the Cunningham entries had been approved for patent in the early part of January, 1909.

Mr. JAMES. 1908, you mean?

Mr. GLAVIS. 1908, yes; and that refers to that order clear-listing them.

Mr. VERTREES. Now, when you did resume work on the Cunningham claims in October or later, as I understood you, you did not proceed to investigate that or any particular group, but every place you went to you investigated all the groups—is that correct?

Mr. GLAVIS. Yes, sir. I would like to explain why I did it. For the reason it would not expedite my reports on the Cunningham cases by my proceeding to a few points in the United States to complete that investigation, so far as the work in the United States was concerned, because I could not make complete reports until the work in the summer of 1909 was concluded in Alaska.

Mr. VERTREES. I am speaking of 1908 now.

Mr. GLAVIS. Well, I was directed in October, you say, to resume my investigation. I could not make the field investigation until the summer of 1909.

Mr. VERTREES. Well, now, we will refer now to some other matters, Mr. Glavis. Among those things which you said respecting Judge Ballinger when you were enumerating them the other day—yesterday, those things which you thought would be urged against him—as I remember, you mentioned among other things a letter written by Mr. Jones, special agent, on December 2, 1907, to you—you will find it on page 5 of the Senate document, if that is the one. If I remember, you thought that this statement in that letter reflected unfavorably on Judge Ballinger:

About this time I had met Mr. H. K. Love, special agent, located in Alaska, and I took him to Judge Ballinger's office and introduced him to the Judge. Mr. Love was desirous of prolonging his stay in Seattle, for family reasons, and it was agreed that he should assist in the investigation of these entries. He took the affidavits of quite a number of persons, some of them prominent business men of Seattle, and I took several. We then went to see Judge Ballinger and told him how we were getting along. He and Love seemed to think that it would not be right to disturb the title to any of these lands, upon which large sums of money had been spent and various small investors had risked their money. The Judge then asked how long it would take to complete the investigation. I said that if it were carried out properly every applicant for lands would have to be interviewed and that if I were the only person working on the case it would take six months or more, as the applicants are scattered from Nome, Alaska, to West Virginia. Judge B. then said that if the law was so construed as to prevent a number of men, with the intention, in good faith, of developing this Alaska coal land, from acquiring title to more than 640 acres, in case of corporations or companies, that have expended \$5,000 in improvements, or 160 acres in cases of an ordinary association of men, he was going to see what Congress could do about the matter this winter. He said that he thought that the laws relating to

coal lands in Alaska should be changed anyhow, and he wished me to get down concerning each group of entries (see my report) for said lands so as to enable me to speak intelligently before Congress. I therefore went to Portland and Spokane, interviewed five or six entrymen in each town, endeavoring to get one or two from each group, as requested.

Now, is that the matter which you complained of?

Mr. GLAVIS. That, and there are some additional statements.

Mr. VERTREES. Do you want the additional statements read?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES (reading):

I then returned to Seattle, within ten days, the judge having asked me if I would return before he went to California, and found that Love had interviewed Munday, and others. Munday, Love, and I had a conference with Judge Ballinger.

That is Judge Ballinger, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES (reading):

I went to the judge's office, and Munday made a plain statement of what he intended to do.

He said, in so many words, that he intended to get as much coal land as possible. He admitted that he had other people file on lands for him, and in one or two instances if I remember correctly, he had supplied the money himself. I recollect that Munday and I had quite an argument at the time. He said that he wanted to go about the matter in the proper way and did not want to get anything illegally, and that he did not think that he was getting anything illegally. I said that if the procurers were persons who did not have money to make the payments required by law and that the rights were merely being used by Munday and his associates for their own gain, proceeding in a legal manner, then my knowledge of the spirit of all land laws was very defective, as I supposed that one could not barter away his rights or give away an interest therein before getting title to the land.

The judge was asked by Munday to say whether or not his scheme for getting the coal lands was legal, but the judge refused to commit himself.

Now, is there any more you wish read?

Mr. GLAVIS. I think the whole letter should be read. I refer to the whole letter as well as any parts of it.

Mr. VERTREES. Then I will read that, then [reading]:

Love did not wish to appear to be very active in this investigation, and therefore appeared to be in a hurry to have me get through with the investigation, was regarded as a preliminary one; so I therefore made my report on the matter and returned to Portland, Oreg.

There was no concealment of facts in any instance during my investigation of applicants, except in the case of a man in Spokane who was engineering the Deal deal. I do not recollect his name, but he denied that he had had anything to do with the matter. All the other applicants came out boldly in their statements. Those who were financing a company or had stock in some organization, based upon coal land, frankly told me what they expected to do with the land and answered every other question that I asked with equal frankness.

When I handed in my report to the judge for his inspection and information that I had done very well with the investigation. I never heard anything from the General Land Office as to the disapproval or approval of the report. I concluded that my action in the premises was satisfactory. I have reiterated and protested by letter that the investigation of these entries should not be stopped. I trust that you may have the duty of carrying out the investigation to its completion and would like to assist you in the work.

Very respectfully,

HORACE TILLARD JONES,
Special Agent, G. L. O.

Now, I have read it all. I understood you to say that the fact that you thought reflected on Judge Ballinger was that about going to Congress about the matter and saying that the laws relating to the coal lands should be changed, and that you thought that

a very improper thing for him to do, or words to that effect. Was that what you said on yesterday?

Mr. GLAVIS. I think what I said was about the Judge being informed that the people were committing frauds against the Government in connection with Alaska coal claims, and then telling Jones that if the law was changed it would prevent people from acquiring more land than was then permitted them; that he intended to see what Congress could do to help them get their titles.

Mr. VERTREES. Is not this what you said, that after that letter of December—

Mr. GLAVIS. What page is that?

Mr. VERTREES. Page 445 of the record. After referring to that letter of December 2, 1907, from Mr. Jones, referring to a violation of the coal-land laws, do you not say: "His remark after that statement of facts and admission"—

Mr. GLAVIS. Where is that?

Mr. GRAHAM. The last paragraph before the bottom, page 445 of the record.

Mr. GLAVIS. Yes; I see that now.

Mr. VERTREES (reading):

His remark after that statement of facts and admission by one of the claimants that such was the case, that he was going to come down here and see what Congress could do to help these people to get the patents, after knowing that they had entered into these unlawful and fraudulent agreements.

And then the next step would be his action—and I think one of the most important facts to show that he is not loyal to his trust and is not faithful to the people is this one: His action, after giving me a full right to investigate and full instructions to investigate all the Alaska coal cases, to take up personally the report of Love, of August 2, 1907, about ten days after I had the conference with him, and he had seen the necessity for making a thorough investigation, to take up this Love report of August 2, 1907, and deliberately order the claims to proceed to patent upon such a report. That report had been in the files for nearly six months at that time, although the clerk of the office had not taken it up.

You are enumerating various things there, but the one I wish that you would refer to is that he was going to come down here and see if Congress would help these people. You state that is one of the things that you think Judge Ballinger was unfaithful to his trust in?

Mr. GLAVIS. Yes, because they were perpetrating a fraud against the Government, and I do not think that is a proper action to take to protect the Government's interests.

Mr. VERTREES. I will ask you if in that year—and I will read now on page 134 of the Senate document, the President's message to the Sixtieth Congress—if he does not say on page 134, the President of the United States:

The regulations should permit coal lands to be worked in sufficient quantities by the several corporations. The present limitations have been absurd, excessive, and served no useful purpose, and often render it necessary that there should be either fraud or else abandonment of the work of getting out the coal.

Mr. GLAVIS. I do not see that.

Mr. GRAHAM. The first paragraph on page 134, in the small type.

Mr. VERTREES. In the message of the President.

And on page 30 of that message, the President, in referring to Alaska, says:

The coal-land laws should be changed so as to meet the peculiar needs of the Territory. This should be attended to at once, for the present laws permit individuals to locate large areas of the public domain for speculative purposes, and cause an immense amount of trouble, fraud, and litigation.

Now, I wish in this connection also to bring to your attention that for you have mentioned the fact that Judge Ballinger appeared before the committee and argued the matter—that is one of the things you said he should not have done. I call your attention to the fact that of James Rudolph Garfield, Secretary, Washington, April 20, 1908, to the chairman of the Committee on Public Lands of the House of Representatives.

Mr. GLAVIS. Where is that?

Mr. VERTREES. It is not in that record. On the question of officers appearing there and discussing these questions. Where was he there and heard Mr. Ballinger?

Mr. GLAVIS. No, sir; I read his testimony.

Mr. VERTREES. You got his testimony?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you get Mr. Garfield's also?

Mr. GLAVIS. I read—I do not think I read Mr. Garfield's testimony. He did not appear on March 2. I read a letter that he had addressed to the Public Lands Committee.

Mr. VERTREES. I will ask you if you do not know whether it is a fact that Mr. Garfield appeared, or rather addressed a letter or message to that committee on April 20, 1908, recommending a certain amendment and the substitution for section 9 of that bill of the following:

That any persons, associations, or corporations who have obtained, prior to the passage of this act, claim or title to any coal lands in the United States by alleged discovery means shall, upon proof to the satisfaction of the Secretary of the Interior that the coal-land price of such land as classified by said Secretary under authority of the act has been paid to the United States, have their patents confirmed for not to exceed two thousand five hundred and sixty acres of such coal land if patents have issued; if patents have not issued, shall receive patents for not to exceed said area: *Provided*, That patents shall not issue or be confirmed for such alleged unlawful claims unless all land in excess of two thousand five hundred and sixty acres, and the surface of the confirmed coal lands (except not exceeding six hundred and forty acres in not more than four compact bodies, which need not be contiguous) involved in one such charge, shall have been reconveyed to the United States free from all encumbrances of any nature whatsoever: *Provided, further*, That all moneys heretofore paid to the Government in connection with such alleged unlawful entries, as such price for lands involved in any one charge, shall be credited toward the purchase price for any part of the lands embraced in said charge and retained by such persons, associations, or corporations under the provisions of this section.

And did he not say in advocacy of that:

This substituted section offers opportunity for relief and at the same time automatically carries with it a punishment proportioned to the value of the coal lands involved in the question. For those who acquired the land under other than the coal-land law the additional price to be paid will be all or a great part of the classified value; for those who paid the minimum coal prices will only need to pay such additional price as will equal the classified value. It should be noted that the opportunity given by this section does not prevent the confirmation of entries where further investigation of the facts would prove that the entries were unlawfully made.

It is suggested that the provisions of the bill should be applied to Alaska. In the present end, sections should be added providing for the filing of declarations of intention for the making of entries for unsurveyed lands; also maintaining in that respect the present system of determining adverse possessory rights by the courts by the provisions somewhat similar to those contained in sections 2 and 3 of the act of April 22, 1904. In order to meet existing conditions and to enable those who made bona fide claims, a section is suggested which will permit such combination by bona fide holders of their heirs or assigns, so that they may include in a single consolidated claim not to exceed 2,560 acres of contiguous land.

Do you know anything about that?

Mr. GLAVIS. No, sir; I never read it.

Mr. VERTREES. Mr. Chairman, I would like in this connection to offer that extract, if it will be permitted to be done.

Senator FLETCHER. We ought to have the whole report.

The CHAIRMAN. It is not in this book?

Mr. VERTREES. No, sir. The bill in which he proposed a change, that section is to be found on page 167 of the Senate document; it is also stated on page 91 of this publication, compilation of letters, etc.

Mr. GRAHAM. What is the date of that report?

Mr. VERTREES. April 20, 1908; it is a letter to the Public Lands Committee.

Mr. JAMES. It is already in here, on page 139.

Mr. VERTREES. That is, the bill is.

Mr. GRAHAM. This letter is not.

The CHAIRMAN. If that report is not already in, it will be put in.

Mr. VERTREES. I am informed that the report is in the compilation, but is not in the letters. I will offer that report at page 139 of the Senate document.

Mr. GRAHAM. Exhibit I?

Mr. VERTREES. It is already printed, but I wish it put in with the record.

Mr. JAMES. You wish it to go in here?

Mr. VERTREES. Yes.

Mr. GRAHAM. I understand that the judge wants only so much as he has read in the evidence.

(The report is as follows:)

EXHIBIT I.

DEPARTMENT OF THE INTERIOR,
Washington, April 20, 1908.

CHAIRMAN COMMITTEE ON PUBLIC LANDS,
House of Representatives.

SIR: I have the honor to submit herewith report on H. R. No. 19421, "A bill to provide for the entry and sale of public lands containing coal."

It is suggested that line 3, section 1, be modified by omitting the word "vacant."

The words "declaration of intention," lines 11 and 12, section 3, should be modified to read "a declaratory statement of his intention," as that is in fact the nature of the paper which is to be filed and conforming to that in use under existing law, will be more readily understood by the public.

The word "further," in line 22, section 3, should be omitted for the reason that said line is the first and only provision for an extension of time. Lines 10, 11, and 12 should be amended so as to read, "and payment of the classified price for the same as fixed by the Secretary of the Interior at date of the initiation of the claim, if classified, or at such price as he may determine, if not determined when the claim was initiated." This amendment is designed to secure to the claimant the right to purchase the land at such price as may have been placed thereon by classification at the time he initiated his claim, preventing the possibility of an increased price being put thereon by reclassification after he had opened the mine, reserving, however, the right of the Secretary to fix a proper price upon lands not classified at date of the initiation of the claim. Lines 25 and 26 of section 4 should be modified so as to provide for the outright sale of not exceeding 640 acres in not more than four compact bodies, which need not be contiguous. The bill as submitted would permit of the purchase of 16 noncontiguous 40-acre tracts, which might be so applied for as to render the remaining surface practically valueless for disposition, or surround on two sides the entire 2,560 acres embraced in the filing.

It is believed that four noncontiguous bodies of 160 acres each will provide ample ground for use in connection with the working and exploitation of the coal under any one purchase.

A second proviso to section 4 is suggested, fixing the fees and commissions to registers and receivers upon the filing of declaratory statements and entry of under the provisions of this act. The fee is fixed at \$2 for each 160 acres or part thereof embraced in the declaratory statements, and the commission at each for the register and receiver, not to exceed in any case, however, \$100.

The addition of another section to the bill following section 4 is suggested, that one entry shall exhaust the right; also providing for an additional entry this law by those who, prior to its passage, may have exhausted their right entry of the smaller area fixed by the old coal law. The right of additional been granted to those who acquired title to less than the maximum area homestead laws, and it would seem but fair, in view of the greatly increased which may be entered under this bill, that the right of additional coal entry be

The fourth word, line 15, section 7, should be "after," instead of "of," entrymen may make their final proof and thereafter have the lands examined in order to determine whether or not coal exists therein. A suspension for entry prior to final proof might delay same for a considerable period in some cases.

After the word "owner," line 6, page 6, it is suggested that the words "claimant" be inserted.

Section 9 of the bill practically confirms all disputed entries or locations on the coal-land laws, if the price therefor, as of the date of such entry or location, has been or shall be paid. It would seem advisable to extend opportunity for those who are under charge of acquiring coal land under other laws, or who have acquired a larger area than the existing coal laws permitted, because the passage of this bill by Congress will recognize the fact that the existing coal-land laws are impracticable. Their impracticability has helped bring about the practice of a person to evade them. The culpability of such evasion is admitted. Yet if, after the passage of this bill, those under charge of wrongful action should be willing to conform to the new law, with the very considerable penalty of assuming all the burdens and responsibilities of the new law, it would seem proper to confirm their right to so much of the land as they shall not exceed in area the maximum amount which might be acquired under the existing laws.

I therefore suggest as a substitute for section 9 of the bill the following:

"SEC. 9. That any persons, associations, or corporations who have obtained title to the passage of this act claim or title to any coal lands of the United States by alleged unlawful means, shall, upon proof to the satisfaction of the Secretary of the Interior that the full coal-land price of such land, as classified by said Secretary, under the authority of law, has been paid to the United States, have their patents confirmed for not to exceed two thousand five hundred sixty acres of such coal lands, if no patent has been issued, or if patents have not issued, shall receive patents for not to exceed the same area: *Provided*, That patent shall not issue or be confirmed for such alleged claim or titles unless all land in excess of two thousand five hundred sixty acres of all the surface of the confirmed coal lands (except not exceeding six hundred forty acres in not more than four compact bodies which need not be contiguous) involved in any one such charge, shall have been reconveyed to the United States free from all incumbrances of any nature whatsoever: *Provided further*, That moneys heretofore paid to the Government in connection with such alleged entries, as purchase price for lands involved in any one charge, shall be refunded towards the purchase price for any part of the lands embraced in said charge retained by such persons, associations, or corporations under the provisions of this section."

This substituted section offers opportunity for relief and at the same time automatically carries with it a punishment proportioned to the value of the coal-land in question. For those who acquired the land under other than the coal-land laws, the additional price to be paid will be all or a great part of the classified value of the land; those who paid the minimum coal prices will only need to pay such additional price as will equal the classified value. It should be noted that the opportunity given does not prevent the confirmation of entries where further investigation of the land has proved that the entries were lawfully made.

It is suggested that the provisions of the bill should be applied to Alaska. The present system of determining adverse possessory rights by the courts by provisions somewhat similar to those contained in sections 2 and 3 of the act of March 28, 1904 (33 Stats., 525). In order to meet existing conditions and to enable those who made and are holding in good faith coal locations in Alaska under existing laws to combine their claims, a section is suggested which will permit such a combination by bona fide locators, their heirs or assigns, so that they may include in a single consolidated claim not to exceed 2,560 acres of contiguous lands.

Inasmuch as this bill is designed to take the place of existing laws relating to public coal lands of the United States, the addition of a section to the bill

existing laws but specifically preserving the right of duly qualified persons to perfect bona fide existing locations and filings is suggested—

"Sec. 10. That all laws and parts of laws relating to or providing for the disposition of the public lands of the United States containing deposits of coal are hereby repealed: *Provided*, That nothing contained in this act shall prevent qualified persons, associations, or corporations, from completing and perfecting locations, filings, and entries made in accordance with the laws and regulations in force at the date of initiation of the claims."

Although the separation of the surface from the coal and the provision for the payment for the coal, reasonably proportioned to its actual value, and the provisions of sections 5 and 6, designed to prevent unlawful combinations or conspiracies in restraint of the mining or selling of coal and to give the United States a preferential right to purchase for the use of its army and navy such coal as may be needed, and the general relief to the coal claimants and operators by so increasing the area which may be purchased as to enable them to make the required outlay and development, are matters of great importance and warrant me in recommending the passage of this bill. I urge particularly upon your attention a further matter which is worthy of very careful consideration. I believe that the coal now belonging to the United States should not only be saved from acquisition under the noncoal-land laws, as provided by the bill, but also that the coal now owned by the United States should be protected by the Government until it has all been used in an economical way. Such protection could be practically assured by retaining in the United States the title to the coal itself and giving to the coal operators the right to mine it at reasonable rentals or royalties, under conditions as free from burdens to the business interests of the operator as can be allowed consistently with protection of the public interests. This might be brought about by leasing the coal land with provision against holding it an unreasonable time for speculative reasons, and particularly with security against mining in a wasteful manner. Such a lease should provide an annual rental per acre, which in itself would be a considerable security against more speculative holding of the land, and in addition thereto a royalty per ton, which should be proportioned to the value of the coal property leased, looked at from the same considerations which are made the foundation of fixing classified prices of coal land preparatory to sale. Private owners, various States of the United States, and different foreign countries have tried the lease system with good results. This system would not unreasonably hamper the business development of the coal, and, without adding an unnecessary burden to the operators, would ultimately bring to the Government a much larger revenue. Furthermore, a lease system is of distinct advantage to the smaller operators who could pay for coal when developed, instead of being obliged to advance the full price of the coal at the time of entry.

The natural conditions in the public lands are such as to make the leasing system in coal mining especially applicable to their development. The risks and uncertainties in many fields make leasing the safer system for even the large operator; while in many areas, especially in the lignite fields, the small cost of the necessary mining plant favors, as does also the leasing system, the mining by a large number of small operators.

The supplies of workable coal in most of the public-land States are entirely inadequate to the future needs of these great Commonwealths, which have but begun their real development; and yet probably in no country is so large a part of the available supply of coal lost in mining as is now the case in many of these western coal fields. The chief purpose of the Government under the leasing system would be the encouragement of economic mining methods with a view to both development for present needs and the perpetuation of the supplies to meet the needs of the future.

This purpose can be accomplished in harmony with state laws, including a state tax on the mine products, and with an amount of federal supervision which would always be small; and even this limited amount of inspection would be done in connection with investigations conducted with a view to helping in the development of increased safety and efficiency in mining.

The United States does not look particularly to the question of revenue in the disposition of public lands, and the chief purpose of the Government in connection with these coal lands must always be to secure their wise and efficient development in the interest of the whole people of the West; but since it has devoted the proceeds therefrom to public purposes, such as reclamation of arid lands, it is reasonable to suppose that Congress would look favorably upon any increase in the revenue from the public land which would not retard its proper development.

For the reasons given, I suggest that the bill be modified so as to give the option of either purchasing or leasing the coal deposits, by the insertion, after suggested section 4a, of the following sections:

"4b. That if any individual or association qualified to enter coal lands under the provisions of this act, or a corporation duly empowered to transact business in the

State or Territory in which the land is situated, makes application to lease the Secretary of the Interior is hereby authorized to lease to such applicant not more than two thousand five hundred and sixty acres of coal land exclusive of the surface, under such terms and conditions as he may deem proper to conserve the public interests; and after such application for the leasing of any definite tract of coal land has been received at the appropriate local land office, the coal lands thus acquired shall not be subject to sale under the provisions of this act during the pendency of such application: *Provided*, That the Secretary of the Interior shall require the applicant to lease an annual rental per acre for the lands leased of five per cent of the fair market price for such lands, and in addition thereto such royalty as he may deem proper in each case, not less than one-half cent per ton nor more than five cents per ton of coal actually mined.

"4c. That at the time of filing application to enter and purchase, or of the time of a lease for coal lands, the entryman or lessee may purchase also, at the rate of not more than fifty cents per acre additional to the classified charge for the coal, or the surface, or both, at a price, by legal subdivisions in not more than four compact bodies, which shall be contiguous, not to exceed six hundred and forty acres of the surface of the coal lands entered or leased, or, at his option, the lessee may lease the exclusive right to use such surface under terms and conditions prescribed by the Secretary of the Interior in the lease."

If the above sections are inserted in the bill, the first proviso to section 4c. of the bill should be omitted, as its provisions are embodied in section 4c. To carry out the suggestions relative to Alaskan coal lands, sections numbered 8a, b, c, and d, should be inserted after section 8. A typewritten draft of the bill embodying the changes and additions is inclosed.

Very respectfully,

JAMES RUDOLPH GARFIELD

Mr. VERTREES. Now, Mr. Glavis, I understood there from your testimony on yesterday one particularly troublesome thing that was reflected, you thought, upon Mr. Garfield as commissioner, and that was the clear listing of the Cunningham group of claims.

Senator FLETCHER. You don't mean Mr. Garfield; you mean Mr. Ballinger.

Mr. VERTREES. Mr. Ballinger.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, now, explain that, Mr. Glavis.

Mr. GLAVIS. Shall I go into the same details?

Mr. VERTREES. No; I believe I will withdraw that. You have already done that on yesterday.

Now, you came down here in December, 1907, having written me that you wanted to come, did you not?

Mr. GLAVIS. Yes, sir; and also telling them the mission of the mission. I wanted to come.

Mr. VERTREES. Well, you wrote to Mr. Schwartz, I believe, that you would like to come down and talk with him.

Mr. GLAVIS. With reference to the Alaska coal cases.

Mr. VERTREES. With reference to the Alaska coal cases?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And he wrote you to come?

Mr. GLAVIS. No; I received a telegram. But first I got a letter from Mr. Dennett asking me whether I could not write it, and I did not know whether I answered it or not. Anyway, I received a telegram in December, about December 7, to proceed to Washington for consultation and instruction.

Mr. VERTREES. And you did come to Washington?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you came down here in December?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you went to see Mr. Schwartz, the Chief of Field Service, did you not, and stated the situation to him?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What was that situation, in a general way—do not go into details, but the one that attracted your attention—

Mr. GLAVIS. Well, it was the result of Jones's report of December 2, 1907—I showed him that—as to what people were saying in Seattle about them getting their coal claims, and it was what I had reported to them officially with reference to what young Mr. Davis stated to me—that Ballinger, as commissioner, in the summer of 1907, had advised them not to make any affidavit until they knew what they had to meet.

Mr. VERTREES. Well, Mr. Schwartz went immediately, did he not, to Mr. Ballinger?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And were you not immediately brought to Mr. Ballinger, also?

Mr. GLAVIS. After Mr. Schwartz came back he sent for me, and told me to come down.

Mr. VERTREES. And that all happened within less than an hour, did it not?

Mr. GLAVIS. No; it took more than that. We had talked about an hour and a half or two hours.

Mr. VERTREES. Well, two hours, then, if you please. The essential thing that I want to get is that you gave it to Mr. Schwartz, he immediately gave it to the commissioner, and immediately Schwartz came back to you and brought you to the commissioner, and you made your statement to him.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then you received verbal instructions, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what were they?

Mr. GLAVIS. Mr. Ballinger stated that Mr. Schwartz had talked to him about it, and that I was going to have charge of the Alaska coal cases; that he had told Mr. Schwartz to give me charge of the Alaska coal cases, and he said: "Now, Mr. Glavis, I want these rumors stopped." He also mentioned some of the people. He said there were some of the people connected in these cases, and he mentioned some of their names, and he said: "There are a lot of them friends of mine and neighbors;" but he said: "I do not want that to make any difference at all as to your investigation." He said: "I would like you to make it known that we are going right after those people, whether they are friends of mine or not."

Mr. VERTREES. Now, at that time there was great unrest out in that country, Washington and Oregon, with reference to the Alaska coal claims, was there not? The people were clamorous and feeling that they were greatly delayed and there ought to be something done. You got that impression out there, did you not?

Mr. GLAVIS. There was a lot of them—they were delaying themselves, as a matter of fact.

Mr. VERTREES. I am not on the question—

Mr. GLAVIS. With the exception of the Cunningham and others were not really delayed, because they had not made proof as yet.

The CHAIRMAN. You do not answer the question. The question was whether there was not a good deal of unrest about those claims.

Mr. GRAHAM. I submit he answered that specifically, that there was no unrest except as to the Cunningham claims.

The CHAIRMAN. I did not understand that.

Mr. GRAHAM. I will ask the reporter to read the question and answer.

(The stenographer read the question and answer as follows.)

Now, at that time there was great unrest out in that country, Washington Territory, with reference to the Alaska coal claims, was there not? The people were restless and feeling that they were greatly delayed, and there ought to be some action taken. You got that impression out there, did you not?

Mr. GLAVIS. There was a lot of them—they were delaying themselves, and making no proof as yet.

With the exception of the Cunningham claims, the others were not really delayed, because they had not made proof as yet.

Mr. VERTREES. He said they were not clamoring; he said they were not delayed.

Mr. GLAVIS. Well, in what way do you mean clamoring?

Mr. VERTREES. I mean complaining—not that there were any men, but that the people who were interested felt that something ought to be done in the matter, and when Judge Ballinger came with the views he had, that something would have to be done.

Mr. GLAVIS. Yes, they were. The information I was hearing was that the rumors I was hearing were that they were rejoicing in the change, because they were going to get their title.

Mr. VERTREES. Rejoicing at the change in the situation, the existing situation was not agreeable.

Mr. GLAVIS. The situation prior to that time was not agreeable.

Mr. VERTREES. That is what I mean.

Mr. GLAVIS. When they were investigating them.

Mr. VERTREES. Well, he told you to make a full, thorough investigation, and to spare nobody?

Mr. GLAVIS. Yes, sir; he requested me—

Mr. VERTREES. He requested you to do that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you went back at what time to do that?

Mr. GLAVIS. I left about December 19.

Mr. VERTREES. Where did you go?

Mr. GLAVIS. I went direct to Portland, Oreg.

Mr. VERTREES. And you began investigations?

Mr. GLAVIS. No, sir; not as soon as I arrived.

Mr. VERTREES. Well, did you shortly?

Mr. GLAVIS. Yes, sir; in January I wrote Special Agent Ballinger and told him to send me all the papers down connected with the coal cases, and in January, I think it was, or the early part of it, I was receiving some preliminary information necessary to make a thorough investigation of the matter.

Mr. VERTREES. Well, you received a communication from the office after you had gotten out there, and not a great while after, stating that the Cunningham group of claims had been closed. Did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you received that about the 22d of January, 1908?

Mr. GLAVIS. Well, the communication was dated January 7, as I recall it, and I did not reply to it until January 22.

Mr. VERTREES. Did you receive that before January 22?

Mr. GLAVIS. From that I would think it arrived in my office about the 12th or 13th. But I can not recall whether I was in the office at that time and failed to answer it, or whether I was in the field; but I did not answer it anyway until January 22.

Mr. VERTREES. According to the course of mails, it should have come about the 12th or the 13th?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And in point of fact you did answer it on the 22d?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you answered it in two ways; you sent a telegram and wrote a letter, did you not, Mr. Glavis?

Mr. GLAVIS. Yes, sir; protesting against the clear listing of those claims.

Mr. VERTREES. Now, turn to your letter there, please—where is that letter? In the compilation that is indexed "List of orders, letters, telegrams, and other exhibits."

The CHAIRMAN. What page is that?

Mr. GLAVIS. Page 49 of the compilation.

Mr. VERTREES. I find on the other page there, page 48, your telegram, is it not, Mr. Glavis, a telegram addressed to the Commissioner of the General Land Office from you from Portland, Oreg., stating that the coal entries mentioned in your letter of January 7 should not be clear listed. That is the telegram you refer to, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Dated January 22?

Now, I will ask you if the indorsements do not show that that telegram was received January 23, 1908?

Mr. GLAVIS. Received in the General Land Office?

Mr. VERTREES. General Land Office, and it was addressed to the Commissioner of the General Land Office.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And received in the General Land Office January 23, 1908?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, isn't it true that immediately upon receipt of that telegram, that date, that Mr. Schwartz, Chief of Field Service Division, recalled the order clear listing those claims and set them aside?

Mr. GLAVIS. Yes, sir; that is on page 52.

Mr. VERTREES. Yes; page 52. The thing I am after is that he did it the very day he got your telegram.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And before he could by any possibility have gotten your letter?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. This telegram states no reasons why he recalled the clear listing. He merely notifies him that they will not be clear listed; and without waiting to know why, he very promptly and immediately on that date recalled that clear listing, did he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And hasn't it stood that way to this day as you know?

Mr. GLAVIS. So far as I know.

Mr. VERTREES. Up to the time you left the service?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, your letter of January 22, which on page 49 of the book referred to—I will ask you if the only that you give, so far as you yourself were concerned, is that—

During the summer of 1907 said entries, among others, were partially investigated by Special Agent H. T. Jones, who, under date of August 10, 1907, reported from the preliminary investigation made, he believed that said entries were false and recommended further investigation.

Twice since making said report Mr. Jones has called your attention to them recommending further investigation of all the Alaska coal cases.

And do you not conclude with this as your reason:

In view of Agent Love's political aspirations and because of the conclusions reached by Agent Jones in his preliminary report, I especially recommend that the clear listing said entries be revoked, pending my investigation. I expect to submit reports thereon within a few months, so that the additional delay hardly cause the claimants much hardship.

Mr. GLAVIS. I think the intervening paragraphs—I have not read them, but they probably might throw some light on it; I don't know that they do.

Mr. VERTREES. All right.

Mr. GLAVIS. May I read it?

Mr. VERTREES. Read them; if you think so, you can put them in.

Mr. GLAVIS. Also the fact that from what Special Agent Jones based his report: that is, upon what information, as well as the reasons; and also I recall speaking to Mr. Jones about this clear listing and conferring with him about it.

Mr. VERTREES. Now, I will ask you if the order clear listing said claims, these entries, made by Mr. Schwartz, and which is found on page 462 of the Senate document, did not direct that you should be notified; that is to say, the very order stating that these coal entries are clear listed, as to division P, also contained this direction: "You will notify Chief of Field Division Glavis?"

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Made at the same time that they were clear listed by the party, of instructions to you; and you were then at Portland, Oreg., were you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that telegram that came to you was dated the 7th?

Mr. GLAVIS. No; it was not a telegram. It was a letter.

Mr. VERTREES. A letter, I mean. That came to you dated the 7th, notifying you that this had been done?

Mr. GLAVIS. Yes, sir; and they sent me a copy of the letter clear listing those cases.

Mr. VERTREES. That is to say the clear-listing orders directed to be notified of the fact that these Cunningham lands were clear listed?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you were notified?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And notified in time—although you delayed answering somewhat—to send a telegram, saying that they ought not to be clear listed, and the clear listing was withdrawn?

Mr. BRANDEIS. Are you not assuming that he delayed. Possibly he was away at the time, Mr. Vertrees.

Mr. VERTREES. I do not mean culpably delayed. I mean it in the sense of delay, without saying whether he was responsible or not.

Mr. BRANDEIS. I thought you did not mean it that way.

Mr. VERTREES. How about that, Mr. Glavis?

Mr. GLAVIS. I wish the stenographer would read the question.

(The stenographer read the question, as follows:)

And notified you in time, although you delayed answering somewhat, to send a telegram saying that they ought not to be clear listed, and the clear listing was withdrawn?

Mr. VERTREES. Isn't all that true?

Mr. GLAVIS. It is true; the statements are true in a way—I will answer it yes, and then I would like to explain.

Mr. VERTREES. Sure.

Mr. GLAVIS. Because I think that is not quite clear. The instruction from Mr. Schwartz dated December 26, 1907, to Mr. Murphy to clear list the entries and notify me is true, and that I was so notified by a letter sent by Assistant Commissioner Dennett dated January 7, 1908, which transmitted a copy of a letter dated January 4, 1908, to chief of division N, clear listing these entries.

The CHAIRMAN. You received that letter about the 13th or 14th, did you not?

Mr. GLAVIS. I received that letter—that letter should have reached me about the 12th or 13th, and probably did; I do not recall when I received it. I might have been in the field, have been away from headquarters when it was received, or it might have been there and I might have had in mind, before answering it, to confer further with Special Agent Jones as to what he believed ought to be done. I can not recall just the reason why.

The CHAIRMAN. You did not reply to it, either by telegram or letter, until the 22d?

Mr. GLAVIS. January 22; yes, sir. It would be about nine days.

The CHAIRMAN. Can you account for the delay in the reply?

Mr. GLAVIS. Why, no; I can not. I think I might have been away, or I might have been waiting to confer with Mr. Jones as to his views in the premises. I recall very definitely that I figured some on whether or not to make a reply to it, because it did not call for a reply; it was a statement of what had been done. But I do not know what the real reason for the delay was. Nine days would not make any difference, so far as the patents were concerned—the patents could not have been written up and issued in that time. They usually take all the way from three months to two or three years, sometimes, to get patents.

The CHAIRMAN. Three months is generally about the shortest time, isn't it?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. After claims have been clear listed before a patent issues?

Mr. GLAVIS. Yes, sir; that is my understanding.

The CHAIRMAN. So that there was ample time for you to make a reply?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, Mr. Glavis, look on page 63 of Senate document. There is a letter there dated Seattle, January 15, 1908. The letter has already been introduced in evidence by you at page 63 of the record. It is a letter by Mr. Clarence Cunningham to the sender and receiver of the United States land office at Juneau, Alaska.

Mr. GLAVIS. What page?

Mr. VERTREES. Page 63 of the Senate document. That is the 24 letters that we were talking about yesterday, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And already introduced by you. Now, I call attention to the second paragraph, page 64, in which this Mr. Cunningham, writing to the register and receiver at Juneau, says:

I am glad to know that you sent your office copies on to Washington, for I am assured by Governor Moore that he is assured by the department chief that patents will be issued forthwith on arrival of plats unless some reason for withholding same is shown by Special Field Agent Glavis, which is not expected.

Now, does not that letter show on its face that when Governor Moore came down he was informed that you were in the field investigating these matters, and that while an unfavorable report was expected, that, nevertheless, if one came it would not be clear?

Mr. GLAVIS. No, sir.

Mr. VERTREES. It does not show that.

Mr. GLAVIS. No, sir; I think it shows this, that Governor Moore was informed that they had clear-listed the entries and had informed me, and that my protest over the action taken by my superior, Commissioner of the General Land Office, was not accepted.

Mr. VERTREES. That what?

Mr. GLAVIS. That the protest from me of the action taken by my superior, the commissioner, was not accepted; and that that was what he meant. He may have meant one or the other.

Mr. VERTREES. You say that that language means what you say?

Mr. GLAVIS. That would be my understanding of it.

Mr. VERTREES. What he says there, that "patents will be issued forthwith on arrival of plats, unless some reason for withholding same is advanced by Special Field Agent Glavis, which is not expected;" now, does that not mean, Mr. Glavis, plainly to Governor Moore to understand, so far as the office here in Washington is concerned, it regarded it as all right, and that patents ought to be issued, but that you, as special agent, were then in the field making examination, and if some reason came to you for withholding same, which was not expected, then they would be withheld?

Mr. GLAVIS. No, sir; they had information here in the office at that time that showed them the unlawful character of the entry.

Mr. VERTREES. The question is not as to how they would understand that. The question is now the notice to Governor Moore that was recurring to that, to get a specific answer, I will ask you, Governor Moore was not one of the Cunningham claimants?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And their money had already been paid?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Some months—the last one had been paid some time before this?

Mr. GLAVIS. The record will give the best dates. My recollection is that the payment was made in October, 1907.

Mr. VERTREES. This is January.

Mr. GLAVIS. About three months before—two or three months before.

Mr. VERTREES. Without regard to that, whether it was two months or three months or five months, it had been paid some time before.

Mr. GLAVIS. All the money had been paid on all the claims.

Mr. VERTREES. And did not this letter show that Governor Moore had come down to the office and wanted his patents, and that, so far as the hearings were concerned, he could not get them unless some report came from your department?

Mr. GLAVIS. Yes, sir; which he says is not expected.

Mr. VERTREES. It was not expected?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And that thereupon when they were clear listed the department was directed to notify you that they were clear listed, to the end—was that not—that if you did know anything you could report it.

Mr. GLAVIS. No; as to the order clear listing, they knew that I had all the reports and all the papers that they had, and when they clear listed on the facts that they had and the copies which were before me, they had all the information that I had, because I could not make very much of an investigation in a day—one day after my arrival from Washington, D. C. I arrived December 24, and the 25th was Christmas, and Monday, the date on which they took action, was the first day that I would have to do work on the Cunningham cases, and they knew that I could not have secured any further additional evidence than that which I had already given them.

Mr. VERTREES. You said it reached you about the 7th, and it would take about three months or more for the whole thing to go through.

Mr. GLAVIS. But we took the action December 26, clear listing.

Mr. VERTREES. But it was action that was revocable at any time and was not, according to your showing, liable to be effective for months. The papers did not go out of the office—the order clear listing—did they?

Mr. GLAVIS. No, sir; the papers remained in the office.

Mr. VERTREES. And could they not be recalled at any time before the patent issued?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that you said took from three months to a year or two?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And they did not write you on the 26th anything to that effect, but wrote you on the 7th of January.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And although you had been away from your office, or for some reason did not reply promptly, nevertheless you did get it in time to send back word and telegraph that these things ought not to be clear listed.

Mr. GLAVIS. Yes, sir; but they did not expect me to proceed, as soon as I got back, with the investigation of the Alaska coal cases.

Mr. VERTREES. Why did they notify you?

Mr. GLAVIS. Why, it is the practice in all land entries where is taken clear listing them in cases we have for investigation field where we make favorable reports on such cases, when the commissioner of the General Land Office acts on such action taken to notify us of the action taken.

Mr. VERTREES. They do not issue a special order—that usage—there is not a special order, is there? Is not that except

Mr. GLAVIS. To notify?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir, I think it is. It is the practice to per clerk to act on the report upon which they pass their order listing, and he notifies us in the regular course of business.

Mr. VERTREES. It is the usage, in every office, I suppose, clerk to give the notice?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But here in this case we have a special order you say now, as I understand you, is unusual—a special order to notify you—a man specially sent off on the investigation of Alaska claims, and sent for that business—that was your business, was it not?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Did they not tell you to go and investigate Alaska claims?

Mr. GLAVIS. Yes, sir; I also had about 1,500 or 2,000 other cases to investigate at that time.

Mr. VERTREES. But you were given special instructions with reference to these, were you not?

Mr. GLAVIS. Not any more special than any other.

Mr. VERTREES. Do these relate to any others than the order that was read here?

Mr. GLAVIS. No, sir, but there were hundreds of letters sent by the commissioner giving me the same directions to investigate other entries.

Mr. VERTREES. I do not mean that you had exclusive orders; you were ordered exclusively to consider this matter that you were specially directed to consider, these Alaska claims, and were off on that business, is that not true?

Mr. GLAVIS. Yes, sir; specially directed or directed.

Mr. VERTREES. And an exceptional order—an unusual order—was done in the office making an order to you with respect to clear listing of the Cunningham claims. You admit that?

Mr. GLAVIS. Yes, sir; the whole transaction was out of the ordinary.

Mr. VERTREES. What was there about it that was out of the ordinary?

Mr. GLAVIS. Because, as a general rule, a clerk in the Land Office, Division P acts upon the reports of the special agents and takes action that they deem proper by writing up a letter to the Chief of the Field Division telling him, if it is a clear listing of the cases, that the cases are clear listed, and also sending the papers to another division to be acted on with a view to there patenting, and—

Mr. VERTREES. Were you—

Mr. BRANDEIS. Won't you please not interrupt him?

Mr. VERTREES. I ought not to interrupt him, but I get so tired stating things that I do not ask him about.

Mr. BRANDEIS. I think he did answer your question.

Mr. VERTREES. He started to say that it was all exceptional, and he has not said anything yet showing that it was.

Senator ROOT. I think that you had better go on with the examination and avoid these discussions between counsel.

Mr. VERTREES. Very well. Now, did I understand you to say to the committee that the course of business is for the clerks to clear list?

Mr. GLAVIS. Yes, sir; they take the action on the agents' reports and write the letter for the signature of the commissioner or the chief of the division, just as the case may be.

Mr. VERTREES. Mr. Glavis, here is what I am trying to get at. Does the chief, as a rule, make the order of clear listing, or is it made by subordinates of an ordinary character, such as you have called "clerks?"

Mr. GLAVIS. Yes, sir. The ordinary practice is for the clerk to take that action and prepare the order clear listing them for the signature of his chief of the division.

Mr. VERTREES. Now, was not the clear-listing order made by the chief himself, Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And not by a clerk at all?

Mr. GLAVIS. No, sir.

Mr. VERTREES. In other words, there was that unusual precaution taken, was there not?

Mr. GLAVIS. Yes, sir; it was unusual action—I do not know as to whether or not it was a precaution.

Mr. VERTREES. Well, you have acquitted Mr. Schwartz, have you not, of any intentional wrongdoing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Do you mean by that to draw the distinction that it might not be a precaution?

Mr. GLAVIS. No, sir; I mean to have this understood, that I believe Mr. Schwartz was acting under the direct instructions of Secretary Ballinger in the action that he took in this regard.

Mr. VERTREES. That is your belief?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And believing that, notwithstanding the certificate of good character you have given Mr. Schwartz heretofore, you say that this was of such a character that you could not call it a precaution, but merely action. Is that right?

Mr. GLAVIS. Yes, sir; as far as precaution is concerned, I mean in the sense of precaution, the protecting of the Government's interest.

Mr. VERTREES. Did not Mr. Schwartz himself make the order, which was unusual? You say the clerks usually do it.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And did not Mr. Schwartz go further and not rely upon the usage of the office about copies, and make a specific order directing you to be notified of the fact?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And were you not notified of the fact?

Mr. GLAVIS. I was.

Mr. VERTREES. And did you not reply that they ought not to be clear listed?

Mr. GLAVIS. I did.

Mr. VERTREES. And the order was recalled immediately?

Mr. GLAVIS. It was.

Mr. VERTREES. And has stood that way to this day, as far as I know?

Mr. GLAVIS. As far as I know; yes, sir.

Mr. VERTREES. Now, recurring to the letter of Clarence C. Graham, written to the agent at Juneau—

Mr. GLAVIS. Written to the register and receiver.

Mr. VERTREES. To the register and receiver, stating that George Moore had been here and had been assured by the department that these patents would issue on the arrival of the plats unless the reason for withholding the same should be advanced by you. That they did not expect you to advance any?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, go to Mr. Love's report, please.

Mr. GRAHAM. Before you leave that, Mr. Glavis, had you made any report or representation to the office up to that time which might lead them to believe that they need not expect to receive an adverse report from you?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Do you know why that language is inserted here "which is not expected"—meaning that an adverse report from you is not expected?

Mr. GLAVIS. Well, I stated, I think, that it was because George Moore did not think that I would protest against the action taken by the commissioner.

Mr. GRAHAM. Had you stated anything to him, or anything which you recall, which might lead them to believe that you would make an adverse report?

Mr. GLAVIS. No, sir.

Mr. GRAHAM. Is the letter published here to which you did not reply for nine days?

Mr. GLAVIS. Yes, sir.

Mr. GRAHAM. Well, is there anything in it that required an immediate reply?

Senator FLETCHER. It is on page 7 of the document, Mr. Glavis.

Mr. GLAVIS. No, sir; it did not ask me for a reply as to my opinion.

Mr. GRAHAM. Is there anything in the letter that required a reply unless you wanted to oppose the clear listing?

Mr. GLAVIS. No, sir; there is not.

Mr. GRAHAM. And then it would have been a voluntary action on your part, and not because there was anything in this letter requiring an answer?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You were special agent at that time, were you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Was it not your duty to report anything which you knew anything or had any facts why the land should not be listed? Was it not your duty as agent to make that report?

Mr. GLAVIS. I thought it was, and that is why I made it.

Mr. VERTREES. That is precisely what I am getting at, a question of fact. The office felt that it was your duty to, did it not, or had the right to feel it?

Mr. GLAVIS. They had not any right to take the action, but they knew all I knew when they took this action.

Mr. VERTREES. I am not discussing the action with you, but I am of your relations. You said you felt it your duty to make that report because you were special agent to investigate. Did not the office expect that you would do that if you knew anything when they sent you that notice?

Mr. GLAVIS. If I knew anything further than they knew, do you mean?

Mr. VERTREES. I am not asking you about further.

Mr. GLAVIS. I do not think they expected me to protest against the same information that they had taken the action on.

Mr. VERTREES. If you will leave out the word "protest," you will get my idea. There were certain reports with reference to the Cunningham claims as early as June and August, were there not?

Mr. GLAVIS. Yes, sir; July and August.

Mr. VERTREES. July and August. Now, there had been no report since that time, had there?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And you had been sent out in December?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So that something like five or six months had intervened between your last report and your going?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Was it not a reasonable expectation that in that time something might be developed that you would hear up that way to modify the report that they had, or change it, or alter it, or involve some development?

Mr. GLAVIS. No, sir; I reported everything that I knew about the Alaska coal cases in December, 1907, and they were basing their action upon the report of August 2, 1907.

Mr. VERTREES. Then your report was based upon what Mr. Jones had reported?

Mr. GLAVIS. And upon the information that I had secured from other sources—what people were saying and comments that were being made, and the statements being made by the claimants.

Mr. VERTREES. Now, you had been sent right back in the territory where you had gathered information, to get more information, had you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And was that notice not sent to you then to the end that if you had anything, or knew anything additional to what they knew, that you might send it?

Mr. GLAVIS. Yes, sir; perhaps that would probably be so, but I did not know of anything additional in that period, and they therefore did not expect me, if I did not know anything additional, to find fault with the action taken upon the report of August 2, 1907.

Mr. VERTREES. But they did expect you, if you found anything, to let them know it, did they not?

Mr. GLAVIS. If I knew anything additional they would surely expect me to report it; yes, sir.

Mr. VERTREES. And there was an interval of time in which you might have known something, was there not?

Mr. GLAVIS. It was a very short space of time.

Mr. VERTREES. Yes; but it was an interval, nevertheless.

Mr. GLAVIS. Yes, sir; but not a sufficient interval to make a thorough investigation of the Cunningham case.

Mr. VERTREES. Have I indicated that there were? Have I said anything like that?

Mr. GLAVIS. I do not recall whether you did or not. I wanted that to be understood.

Mr. VERTREES. I should think that would go as a matter of course; that in a few days you could not investigate in five, or six, or seven States, from Alaska to Detroit. What I want to know is, do you not know, Mr. Glavis, that they sent you that notice to the end that if you did have anything to urge why there should not be a clear listing of this land that you should make it known?

Mr. GLAVIS. No, sir.

Mr. VERTREES. What did you understand you were sent there for?

Mr. GLAVIS. Not that if I did have anything to urge. It was not sent for that purpose. It might have been sent for the purpose, if I had anything additional they would expect a protest from me, but not that I had anything to offer, because in taking action upon a favorable report of a special agent they would not ask his advice in doing that.

Mr. VERTREES. Now, did you understand me to ask whether or not they wanted your advice and wanted to know whether you would protest or not on the face of the record? Did I ask you any such question as that?

Mr. GLAVIS. I think you did.

Mr. VERTREES. You think I did?

Mr. GLAVIS. I understood your question to be in that way.

Mr. VERTREES. Then, I will put it differently, if you understood it that way. I did not ask you as to whether they wanted your judgment as to the record on which they were acting or assuming to act. I did not ask you whether they wanted to know whether you would protest or not on that record, but I wanted to know if, whether or not, they did not send it to you for the purpose of finding out whether you had any additional information that would stand in the way of the clear listing of this land.

Mr. GLAVIS. They probably had that in mind, and also to inform me that I need not further investigate them.

Mr. VERTREES. Both; that you need not further investigate them, and also if you did know anything that you might state it?

Mr. GLAVIS. Anything additional from what they had already got?

Mr. VERTREES. Anything additional.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But you had nothing additional, did you?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Nevertheless, you did notify them that you did protest, and you did act on the record that you had, and that they had, because you thought they ought not to be clear listed?

Mr. GLAVIS. Yes, sir; I did.

Mr. VERTREES. And they accepted your telegram without asking for your reasons. Is that not true?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. Let me ask a question. I understood you to say that it was the general practice in the Land Office whenever a case was clear listed, an application was clear listed for patent, to

notify the agent who had been investigating the case that the clear listing had been made. That was the general practice, as I understood you.

Mr. GLAVIS. The general practice was to notify the chief of the field division of that territory.

Senator SUTHERLAND. That is the chief of the field division who has had the case under investigation?

Mr. GLAVIS. Yes, sir.

Senator SUTHERLAND. And that, I suppose, generally occurs after the case has been completed by the field division?

Mr. GLAVIS. Reports made, yes, sir, by the special agent.

Senator SUTHERLAND. What is the purpose of that notice?

Mr. GLAVIS. To advise us that they have acted on our reports and of the action taken on our recommendation, so that then they can make final disposition on our records out there and show the final action taken.

Senator SUTHERLAND. That is the object of it, is it?

Mr. GLAVIS. Yes, sir; it is more to complete our system of records and make them correspond with the action taken in Washington.

Senator SUTHERLAND. That is all.

Mr. GRAHAM. What, if anything, would it have to do with directing your future movements as to abandoning work on that matter and taking up other work?

Mr. GLAVIS. Did that have anything to do with it, do you mean?

Mr. GRAHAM. What, if anything, would it have to do with that feature of it?

Mr. GLAVIS. Well, usually when we heard from the office clear listing the cases, we have taken the last action as far as the field examination, or the work of the division goes.

Mr. GRAHAM. One more question on this letter, Mr. Glavis. Was there any practice or course of business between the Land Office and field agents in such matters by way of asking the chief of field division whether he had any objection to urge against clear listing?

Mr. GLAVIS. Oh, yes, sir; I have received letters of that kind.

Mr. GRAHAM. For instance, in this letter it says:

Upon the above-mentioned reports the entries above referred to are clear listed as to this division.

Now, was it sometimes added: "Unless you have objection to urge," or something to that effect?

Mr. GLAVIS. Yes, sir; I have received letters of that character notifying me that unless I knew of some reason why the case should not be clear listed and approved for patent, that that action would be taken.

Mr. GRAHAM. Do you understand that there is any such suggestion in this letter?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Nevertheless, Mr. Glavis, upon receipt of notice of clear listing, would it not be your duty as such agent, if you had any reason to give why they ought not to be clear listed, to make it known to the office?

Mr. GLAVIS. I felt that way; yes, sir. That is the reason I took the action in this case.

Mr. VERTREES. Do you not understand that that would be every agent's duty in that situation?

Mr. GLAVIS. Why, I think it would be every agent's duty; y

Mr. VERTREES. That is, they understand at the office th
his duty?

Mr. GLAVIS. Well, I do not know what the understanding
office was, but when they wanted a report on the advisab
clear listing or a report of any action, they asked for it. Th
not first take the action and then ask for it afterwards.

Mr. VERTREES. Did you not say a while ago that they d
very thing; that it was the custom of the office when the
listed to notify the agent? Did you not make that statement?

Mr. GLAVIS. Clear list on a favorable report?

Mr. VERTREES. They do not clear list on anything they
think is favorable, do they—that is, they should not?

Mr. GLAVIS. No, sir; they should not.

Mr. VERTREES. To get back to what you said a while a
you not say that it was the custom of the office when the
listed to notify the agent?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. When you got this letter of January 7, which y
you got about the 22d of January, saying this land had bee
listed, do I understand from the record here that you wrote
the tenor of which was that you thought this clear-listing acti
been taken upon reports filed by Love—both subsequent to
2, 1907—or, in other words, a new report had come in?

Mr. GLAVIS. No, sir; I felt that Love must have made two
of August 2, 1907. I had already received one in Washing
December—had gotten a copy of the August 2, 1907, report
cial Agent Love—and I could not see how they could bas
action on that report.

Mr. VERTREES. You thought, then, that he had made two
on the same date?

Mr. GLAVIS. I thought that that was the only logical con
to reach.

Mr. VERTREES. And you had only seen one of them?

Mr. GLAVIS. Yes, sir; and I asked then for a copy of the
2 report in my report of January 23.

Mr. VERTREES. That is what I was trying to get at. I t
maybe you were of the opinion that he had made another
different from the one made in August.

Mr. GLAVIS. No, sir; I know it was that date.

Senator ROOT. Let us go on with the testimony.

Mr. VERTREES. Now I will go to the Love report, which is fo
page 451 of the Senate document; that is, Mr. Love's report,
August 2, 1907, to the Commissioner of the General Land Offi

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. He says there:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE
Seattle, Washington, August 2

The honorable COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: I have the honor to state that the following persons have recently,
Clarence Cunningham as agent, entered at the land office, Juneau, coal land
the Kyak recording district (Katalla), Alaska.

And then he names a number, about 25 there, I believe—not the whole 33. Is that not correct?

Mr. GLAVIS. Do you say that they are not all mentioned?

Mr. VERTREES. I do not think they are. There are 25 of them. Then he proceeds:

Also an entry by Cunningham in his own behalf.

These are pending in your office on application for patent.

In a recent conversation with Mr. Cunningham, who is fully informed on all matters past and all future plans of his principals, he stated that it had always been the hope of these several persons that arrangements might be effected after entry for the joint working of the lands, and that since entry in the local office an effort had been made by him to secure the formation of a company from amongst the entrymen for the purpose of developing and operating a coal mine of the tracts so entered; that for such purpose a meeting of such entrymen was recently held at Spokane, and a committee appointed for the promotion of such an organization and to secure the transfer of the various holdings to a trust company, subject to the perfection of such plans; that such is now in course of formation.

At different dates, I have recommended to the register and receiver, Juneau, the allowance of the applications of the above entrymen. I believe the action of entrymen toward the formation of a company pending patent, as above set out, to be allowable under the law, but deem it proper to lay the information before you.

Very respectfully,

(Signed) H. K. LOVE,
Special Agent, G. L. O.

The foregoing letter contains the following notation on back:

H. K. Love, Special Agent, G. L. O., Seattle, Washington, August 2, 1907.

Reports recent action taken toward formation of a coal mining company by certain coal land entrymen named, Juneau, Alaska.

Now, that is the report you refer to, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And does not Mr. Love there recommend that this land be clear listed, or rather the patent be granted?

Mr. GLAVIS. Well, it is not a direct recommendation. He says: "I believe the action of entrymen toward the formation of a company pending patent, as above set out, to be allowable under the law," etc. That is "believe," but he deemed it proper to lay the information before the commissioner.

Mr. VERTREES. As a point of fact, did not both Mr. Pierce, the First Assistant Secretary, and the Attorney-General, Mr. Wickersham, hold that that very proposition is correct?

Mr. GLAVIS. Not under the act under which they were acting in applying for patent.

Mr. VERTREES. Is there anything forbidding it to entrymen?

Mr. GLAVIS. But the report here says this: That it had always been the hope of the several persons that arrangements might be effected after entries for the general working of the land, and that since entry they had made an effort toward the formation of a company. Well, Judge Hanford, in the decision of the Portland Coal and Coke Company case held that such an understanding was unlawful, and I had furnished Judge Ballinger with a copy of that opinion.

Mr. VERTREES. He held that where there has been an agreement or understanding beforehand—

Mr. GLAVIS. That statement implies, I think, the same thing, that it has always been their hope—it is a suggestion, I would say; it is that mere fact. You could not cancel the entries on that fact that they had carried out their hope of the formation of a company, and the probabilities were that they had a tacit understanding besides the mere hope that they would form the company.

Mr. VERTREES. In other words, if they had more than had an understanding, then it would be illegal, and, therefore accomplished something eventually, that therefore they had agreed to do that thing. That is it, is it?

Mr. GLAVIS. Yes, sir; and, furthermore, the situation be there were 33 claimants and all represented by one agent the claims contiguous, and they always entertained the same that you did to do this as soon as they got entry, and as soon got entry they took action to carry out that hope.

Mr. GRAHAM. As I understand you, you contend that this is sufficient to allow suspicion to justify further investigation?

Mr. GLAVIS. Yes, sir.

Mr. DENBY. Mr. Glavis, in case entries are canceled, what of the money that has been paid for the cash certificate?

Mr. GLAVIS. If it is canceled for fraud they do not receive money. The money is forfeited, as I recall it.

Mr. DENBY. It is forfeited to the Government?

Mr. GLAVIS. Yes, sir; that is my understanding of it. I am sure as to that.

Mr. DENBY. They cancel it for fraud, do they?

Mr. GLAVIS. They sometimes cancel where there are no claims.

Mr. VERTREES. And have they not got it down to this, is fraud in the land laws of the Government if there are several sons that locate or start out to locate. If they agree before start to locate that they will associate, that that is a fraud; they go and locate on the way back, that that is not a fraud.

Mr. GLAVIS. It depends on what law you refer to.

Mr. VERTREES. I mean these Alaska land laws.

Mr. GLAVIS. The act under which the Cunningham claim was made proof, it would be unlawful prior to the making of the entry.

Mr. VERTREES. Yes; prior to the making of the entry. Since the act of 1908, it is prior to the initiation of the entry.

Mr. GLAVIS. Prior to the initiation of the entry; yes, sir; this is prior—some time before they make the entry.

Mr. VERTREES. And that is what they call fraud, that association of two or more; that is the kind of fraud that forfeits the entry and your interpretation of this was that if several men, with knowledge generally, make the agreement and hope at some time to do it, that that of itself was sufficient to show that there was an agreement to make this fraudulent combination, and forfeit the money and property?

Mr. GLAVIS. No, sir; not sufficient to do that, but it just creates a presumption and suggests the advisability of investigating whether or not they had gone that step farther which would be a conspiracy to secure more land than an association is allowed by the coal-land laws.

Mr. VERTREES. Is it not true that if they had, then it is a conspiracy—it is an agreement between two or more who have money in it; they have combined on the land itself merely; that was a violation of law. The government has not been defrauded in any way, assuming, of course, that the limit has not been exceeded, 2,560 acres, but it is a violation of the law, and in that sense it is fraud. Is that not the situation?

Mr. GLAVIS. No sir, not quite; the limit in this case, in the first instance, was 5,200 acres. That is nearly twice that amount, and the act of May 28, 1908, had not been passed when this report was submitted, or when it was considered by the Commissioner of the General Land Office. They had only the act of 1904.

Mr. VERTREES. We will get along then. It is true then, is it not, that Mr. Love's information was that it was all right and still he thought it proper to submit it to the department?

Mr. GLAVIS. Yes, sir; he believed that such a state of facts should be brought to the attention of the commissioner.

Mr. VERTREES. Does he not say:

At different dates I have recommended to the register and receiver at Juneau the allowance of the applications of the above entrymen.

Does he not say that? Does he not say, "I believe the action of entrymen toward the formation of a company pending patents as above set out to be allowable under the law, but deem it proper to lay the information before you?"

Mr. GLAVIS. Yes, sir; and it is also shown by this report that it was in a recent conversation that he had learned this from Mr. Cunningham, which would indicate that it was subsequent to his making his favorable report to the register and receiver at Juneau.

Mr. VERTREES. But he is making this report now to the General Land Office. It was prior, that report, was it not? How could he report it?

Mr. GLAVIS. Oh, I do not doubt that facts show that it was prior to this report, but this conversation with Mr. Cunningham was subsequent to his report to the receiver at Juneau.

Mr. VERTREES. We are not dealing with the Juneau report; we are dealing with this one now.

Mr. GLAVIS. I thought you were dealing with what he recommended and what he believed to be necessary.

Mr. VERTREES. Reiterating his recommendations and telling the land office here, is he not, that he thinks they ought to be patented. You understand that, without regard to the Juneau report or the conversation, do you not?

Mr. GLAVIS. Yes, sir; he states that such a state of facts, I believe, is not a violation of the law.

Mr. VERTREES. Now, the next we have is Mr. Jones's report——

Mr. GLAVIS. No; I want to correct that. This last paragraph says: "I believe the action of the entrymen toward the formation of a company pending patents, as above set out."

Mr. VERTREES. "As above set out." That was the action set out?

Mr. GLAVIS. Yes. He leaves it out there, but I guess he means the action before the action taken to form a company.

Mr. VERTREES. Are you denying that Mr. Love does recommend there that the land be passed?

Mr. GLAVIS. No, sir; but I do state that this report from my experience as Chief of the Field Division, in passing on a report, can not be considered a favorable report in our sense of what is a favorable report.

Mr. VERTREES. That is your judgment only?

Mr. GLAVIS. Yes, sir; from my experience in passing on claims.

Mr. VERTREES. But Mr. Love regarded it as one, made it as one, and it went to the office and it was clear listed there by Mr. Schwartz.

Mr. GLAVIS. Whether Mr. Love considered that this was able report, I could not say, Mr. Vertrees.

Mr. VERTREES. Now, let us get to the report of August 1 by Mr. Jones, which is on page 491 of Senate Document 24; report was here too, was it not, Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, that report is made by Mr. H. Tilla at Seattle to the Commissioner of the General Land Office?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Then on page 452 it says:

Since beginning the investigation we have taken about twenty-five from the different persons representing the aforesaid "groups," and the ments are hereto attached and made a part of this report and will be e herein by numbers of "exhibits" referring to said groups:

Then he sets out a number of groups, from one of which g the C. Cunningham group. That is correct, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And opposite that group he has "See Exh 21." Exhibit No. 21 is found at page 281 of the same book.

Mr. GLAVIS. Two hundred and eighty-one?

Mr. VERTREES. Yes, sir. But lower down, now, in the sam on page 452, he makes this statement:

Ignatius Mullen, son of the receiver of the United States land office s Alaska, was located on a coal claim in Alaska by Clarence Cunningham senior, states that he has put about thirty-six hundred dollars into his son's I think he claims that this money is by way of a loan to said son. A statem taken from the son when he can be found and one from Mullen, senior, when Love, special agent, returns to Juneau, which will establish the good or b this coal land filing of Ignatius Mullen.

Now, go, if you please, to 281, and see the exhibits ther Cunningham claims. I wish to read them [reads]:

EXHIBIT 10.

[Exhibit No. 21 of Jones report.]

STATE OF WASHINGTON,
City and County of Spokane, ss:

Fred H. Mason, a citizen of the United States, of lawful age, whose resi post-office address is No. 214 Eighth avenue, Spokane, Wash., being du hereby on oath deposes:

I am the identical Fred H. Mason who on July 4, 1904, filed notice of l coal claim "Adrian" in the Alaska district. On February 21, 1906, I filed d statement No. 185 for said land, and on April 11, 1907, I made entry No. same, all through my agent, Clarence Cunningham.

We—that is, the group of Spokane and other parties who filed through Cu as agent—have each put in \$2,000 or \$3,000 in developing said coal lands and the government price for the same.

We have not sold or agreed to sell our claims. Each member or individ party that filed is well able, financially, to pay for his land. I do not thin single individual would agree to sell his claim.

We have often talked of what we were going to do with our claims, both after making entry. The popular idea with us is that after we get our title Government we will make an effort to get a railroad to our lands, so as to g out for shipment. We thought that if it were perfectly legal we would fo pany and issue stock for the securing of bonds for the building of a road to but we don't want to do anything that is not regular. Or we thought if we somebody to take a part of the stock and put a railroad in we might do that.

We realize that it would be impossible for any individual claimant to put to secure transportation.

A large portion of the money invested in this land has been used in developing the claims.

Mr. Cunningham, as I understand it, wrote the Interior Department, asking if instead of doing a small amount of development work on each one of the 33 claims located by him, could he use the lump sum to develop certain ones of the claim, and I understand that he received a favorable reply to his letter and has gone ahead along these lines.

There have been several parties who have approached Mr. Cunningham with a view to investing money in a railroad to develop and transport the coal from our claims, and, if the titles are found to be good, a deal with an eastern representative of the American Smelting and Refining Company, which is the Guggenheim outfit, may be closed with us.

I am glad the department has sent its representative here to look into this matter, because we want to do the right thing in the matter. We would like to get a ruling on the matter, as to whether or not we can do what we want to do in connection with this coal land, and, of course, if we can't combine and interest others in our proposition we want to know it so as to be able to go ahead and handle our claims individually.

(Signed) FRED H. MASON.

Subscribed and sworn to before me at Spokane, Wash., this 5th day of August, 1907.

(Signed) HORACE TILLARD JONES,
Special Agent General Land Office.

And below that is another affidavit of Mr. A. B. Campbell, in which he says:

A. B. Campbell, being duly sworn, hereby on oath deposes:

I have read the above statement of Fred H. Mason with respect to his coal claim in Alaska, and I hereby state that the same circumstances apply to my own coal claim, being entry No. 13 for the "Collier" coal claim.

(Signed) A. B. CAMPBELL.

Subscribed and sworn to before me at Spokane, Wash., this 5th day of August, 1907.

(Signed) HORACE TILLARD JONES,
Special Agent, General Land Office.

Now, isn't it a fact that a few days before that, that report being dated August 10, that on July 23—I here refer to page 450 of the Senate document—that Mr. Ballinger was at Seattle and had a conversation with this agent Jones, in which he was informed of that which was reported on page 453 of that report as to Ignatius Mullin, son of the receiver, and that thereupon Mr. Ballinger, under date of July 23, 1907, wired Mr. Dennett, acting commissioner at Washington, as follows:

Suspend action coal application Ignatius Mullin. Declaratory statement 180 awaiting special agent's letter.

(Signed) R. A. BALLINGER.

The CHAIRMAN. What is the answer to that?

Mr. GLAVIS. Yes, sir; that telegram I have no reason to believe was not sent, but as a matter of fact, as it appears from the commissioner's letter of June 21, 1907, all the Alaska coal cases were suspended awaiting this report.

Mr. VERTREES. That isn't the point I am on. There had been a general letter of suspension. The essential thing I want your mind directed to and that I want you to speak about, Mr. Glavis, as to whether it is correct or not is this: That there is that report in which the Cunningham group is mentioned with favorable affidavits—those on page 281, which I have read, and the only exception that the report takes to the Cunningham group is that which relates to one of the group, Ignatius Mullin—is not that true?

Mr. GLAVIS. Oh, you presume that this is a favorable report; I could not myself make that statement—that that is a favorable affidavit on page 281—until the entire investigation of these claims is made; I can not consider a favorable report or a favorable affidavit.

Mr. VERTREES. I am not on the question of whether the report says is true or not.

Mr. GLAVIS. You have stated it was a favorable affidavit.

Mr. VERTREES. Isn't it?

Mr. GLAVIS. No, sir; I couldn't answer that question when you asked that way, because I don't quite consider it a favorable affidavit.

Mr. VERTREES. You then think that affidavit was not favorable?

Mr. GLAVIS. It is not directly unfavorable, but until all the entries were investigated, all the entries were investigated in that way, and could not be taken as conclusive proof of their good faith.

Mr. VERTREES. You surely understood my question, but I will state it again, and I will ask you to please answer that. I will ask you if it was a full, thorough, and complete investigation; whether or not you looked into it it might not show that there is no truth in the affidavit; that is not what I am on. I am on the nature and character of these affidavits that accompanied that report, and if they were so far as it appeared on the face of that paper as to the Cunningham group, favorable, with the exception of the Ignatius Mullin claim, that he was specially singled out, being one of that group, and that there was a question about?

The CHAIRMAN. Now, try and answer that question.

Mr. GLAVIS. No, sir; I think I would like to explain. The affidavit on page 281, of Fred H. Mason, I don't think is a favorable affidavit. It shows that they had each expended the same amount of money in the development of these coal lands, which was represented by one agent, and the claims were all contiguous. It shows that they had this idea of forming a company when they got their titles; and it further shows that they had in contemplation of carrying out that idea, and that they had also been developing one claim.

Mr. VERTREES. Now, at the bottom of page 452, does it appear [reading]:

In view of the fact that the majority of the statements taken in this matter indicate that the lands, which are the subject of this investigation, appear to have been taken under, to say the least, a misapprehension of the rights of the land, to combine and locate together under one financial arrangement, it is recommended that a strict investigation be further made of each and every claim in connection with other locators in the groups above mentioned.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES (reading):

This is particularly necessary in the matter of the locations made by Charles Simmonds, Doughten, Stracey, and Chezum.

Now, the affidavits with reference to them, as well as a number of the others, all show what he said a majority show, do they not?

Mr. GLAVIS. I don't recall them, but I have no doubt they are.

Mr. VERTREES. You don't remember that? They are in the report, and they will show for themselves, so you need not bother about them.

Now, going to page 453 of the Senate document, Mr. Johnson's second report, August 13, 1907, in which he says:

SIR: Referring to my investigation of certain coal-land applications for lands in Alaska, I have the following list of names, with the city and state address of the applicant, for use by your office in a further investigation of the frauds in coal lands in Alaska.

And there follows on pages 453 to 459 and 461, inclusive, a list, to which he adds:

In addition to the list of applicants sent me by your office, June 21, 1907, letter "P" HHS. 38321, I have added about 120 names that I found of record at Juneau, Alaska.

That is to say, he merely sends now for use here a completed list of everybody that had entered lands in Alaska. Isn't that what that means that far?

MR. GLAVIS. No, sir. It means further than that; that the completed list is sent, as Mr. Jones states in his opening paragraph, for the further investigation of the frauds in coal lands in Alaska.

MR. VERTREES. Yes. That is the purpose for which he sends it?

MR. GLAVIS. Yes, sir.

MR. VERTREES. Now, he adds:

From the talk of different attorneys and individuals interested in the Alaska coal lands I feel that the disposal of the lands all tends toward one direction, and that is the Guggenheim companies.

Then he states what the papers have said, and then he gives a conversation with Mr. Green as to the Doughten claim and what Doughten was going to do, and about the sale of his lands, and thereafter he again recommends that these entries be carefully investigated by an experienced and fearless agent?

MR. GLAVIS. Yes, sir.

MR. VERTREES. Now, does he not refer there to those that he specifically mentioned under the head of what he calls "finis" there, and not to the entire list of everybody that has entered?

MR. GLAVIS. No, sir; I would like to explain why I don't believe he does.

MR. VERTREES. No; you have answered my question.

MR. GLAVIS. I have a right to explain my reasons for reaching that conclusion.

MR. VERTREES. All right, if you think it needs explanation.

MR. GLAVIS. Because he states he transmits this list for the further investigation of the frauds in coal lands in Alaska, and in the second paragraph he states "from the talk of different attorneys and individuals interested in Alaska coal lands I feel that the disposal of the lands all tends toward one direction, and that is the Guggenheim companies." It will be seen on page 281 that Mr. Jones might well have had in mind the Cunningham claims, because in the affidavit of Fred H. Mason, Mr. Mason states that they had been approached by representatives of the Guggenheim outfit.

MR. VERTREES. I wish now to offer a copy of a report which is not found in any of the printed documents, which is the report of Mr. Love, a special agent, dated at Juneau, Alaska, November 12, 1907, reporting on the Ignatius Mullin claim, in which he says:

I have the honor to request reference to my letter of July 24, 1907, requesting withholding of patent in coal cash entry No. 5, Ignatius Mullen, to await further inquiry into what connection Mr. P. M. Mullen, receiver of the United States land office at Juneau and father of entryman, might have with the matter.

You will recall that this letter was written by your direction, while in Seattle last summer, and was based, I believe, upon the statement made to you by Mr. Jones to

effect that Mr. Mullen had recently stated to him that he had \$3,600 tied claim of his son. This is my remembrance of Mr. Jones's statement, as I have

Inclosed please find the sworn statements of Receiver Mullen and of Ignatius Mullen.

I have known the claimant for two and a half years, and know that he is a of very steady and industrious habits, believed in by his employers, and that he has been during my acquaintance holding positions with good compensation, and I have understood that he saved a very considerable part of his earnings. I have some time that for several years he has owned a tract of Nebraska land for some \$300 yearly rental is received. A year or more ago his father told me receipt from him of \$500 for safe-keeping and disbursement on account of his

In time past, Mr. Mullen, sr., has often spoken to me of this claim, and in these talks gave me the general impression that he was aiding his son with time to time, as well as acting as agent in paying out money on its account, was then at a most inaccessible point on Cook Inlet, working for the Alaska Railway. But such an impression should not be considered against the veracity of both, the veracity of whom is unquestioned.

Unless Mr. Jones is very sure that he heard correctly, I would think that Mullen said was to effect that the son had the sum stated tied up, or Mr. Jones have so stated it, and I have misunderstood him. A reason for such belief is the taint that the son did have a considerable sum in it, and the whole investment not exceed \$3,600.

I have heretofore recommended allowance of patent in this case. I was under the impression that the father had helped the son with advances; but firmly believing that the tract was the sole property of claimant, in perfect good faith, I believed it allowable. Nor did I consider the son a member of Receiver Mullen's family, in sense prohibiting one such from exercising rights to public lands, as he had some time prior to its initiation been making his own living apart from father and son. Your verbal criticism that my report should have shown the fact of relationship, however, perfectly fair.

In view of the showing made by inclosed affidavits and statements hereon, I again respectfully recommend issuance of patent.

Very respectfully,

H. K. Love,
Special Agent, C.

Mr. BRANDEIS. May I ask whether that is a copy from the General Land Office?

Mr. VERTREES. It purports to be.

Mr. BRANDEIS. Does that copy show the date when the report was filed in the General Land Office?

Mr. VERTREES. No; but it shall show that, if you wish it.

Mr. BRANDEIS. I would like to have it shown. I would like to have the time of filing appear on it.

Mr. VERTREES. I am informed by Mr. Finney that a copy of the report was filed February 8 with the committee.

Mr. BRANDEIS. I want the date when the original report was filed in the land office; that is what I want, Mr. Finney.

Mr. FINNEY. I will get that for you.

The CHAIRMAN. That will be supplied, and the paper will be put into the record.

Mr. VERTREES. I call your attention now to the report—

The CHAIRMAN. This, I understand, is one of the papers coming before us by one side or the other?

Mr. BRANDEIS. It is entirely agreeable to us to have it filed, but we only wanted it to appear with the date of its original receipt in the land office.

Mr. VERTREES. Yes, sir; that shall be done. It is not on my mind, I think.

The CHAIRMAN. Very well, let it be filed.

Mr. VERTREES. I now call your attention to the letter from H. K. Love, special agent, to you, Mr. Glavis, dated February

1908, found at page 9 of the Senate document, written from Juneau, Alaska, February 17, 1908:

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oreg.

SIR: Replying to yours of January 31 ultimo, R. E.—

I suppose that means a small re, in re——

Mr. GLAVIS. Yes, sir, I think the original shows that.

Mr. VERTREES (reading):

R. E. reports to G. L. O. in the various coal locations comprising what is commonly known as the "Cunningham group," and calling for copy of report therein, would say that applications for entry of these locations were made at different dates, and that officially each claim is distinct or was so considered by me. Therefore, there is not any single report as you require, but a letter to the R. and R. at Juneau, in each case, including an affidavit I secured from each applicant, and with statement that, considering the fact set forth in such affidavit and other information had, I recommend entry.

(I believe the instructions do not provide that an agent should "recommend," and it is not my custom now.)

Now that last paragraph is in brackets, Mr. Glavis, and it appears in what you sent to the President. Is that in the original or a remark of your own? Do you remember about it?

Mr. GLAVIS. No, sir. Anything I quoted to the President was a complete copy. I didn't try to insert anything.

Mr. VERTREES. I did not mean that you had done it purposely, sir.

Mr. GLAVIS. No, sir; I think it is in the original. I am quite sure it is, in fact.

Mr. VERTREES (reading):

The further information consisted of many interviews with Cunningham and various other persons in and about Katalla, from a consensus of which a fairly reliable opinion of the real status could be determined, although the individual interviews and statements could not well be recorded. A principal one was that with the father of Fred C. Davison the first day I was in Katalla, and while yet utterly unknown to him; while sitting on the shore, throwing pebbles into the surf, he told me what considerable sums hisson had put into his claim, and how; of his uncertainty that it was worth it, and how he had stopped off on his way to Seward to try to determine for his son whether to hold or let go: that it might be years after entry before anything could be realized, and on my question, that there was not any plan amongst the various locators as to future disposition.

Everything said, and the manner, indicated that he told the truth. From all I reasoned that the absolute requirements of the law were being met by these people to a very considerably faithful degree, though likely not covering what might be considered by some as the probable intent; the perfect non-existence of any intent or hope, however indefinite of final consolidation by locators or vendees. I am not simple enough to believe but that coal locators hope, at least, to join with others for development or sale, after entry.

Later, upon verbal order of the honorable commissioner, I wrote the General Land Office on July 24, 1907, requesting withholding of patent in entry No. 180, Ignatius Mullen, pending inquiry into relations between entryman and his father, P. M. Mullen, receiver, Juneau; November 12, 1907, I reported therein, renewing recommendation that patent issue.

After entry, to wit, August 2, 1907, I advised the General Land Office that Cunningham had informed me of efforts pending, initiated subsequent to entry, looking to the promotion of a company and the pooling of the lands. This was because in a conversation in his office in Seattle, Judge Ballinger stated that such a proceeding prior to issuance of patent was not allowable, and it was plainly my duty to advise of such a material fact. The foregoing, I believe, covers all material action taken in these matters. Inclosed you will find a blank copy of the affidavit referred to, secured from each applicant.

I have referred to all these for the purpose of having you state whether or not this report of Love and the two reports of Jones were before the land office, and if they had not been received previous to the clear listing of these lands?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the Ignatius Mullin report they had, too?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I will ask you if this letter was not written to you, that I have just read, when you made some inquiry yourself of Mr. Love in January, 1908?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I call your attention to the letter of Assistant Commissioner J. H. Fimple (page 492 of Senate document), and I will ask you if this letter is not a letter from Mr. Fimple, as assistant commissioner, to Mr. Clarence Cunningham, Wallace, Idaho, dated February 24, 1906, which is in reply to an inquiry from Mr. Cunningham as to whether or not they could construct this tunnel which has been spoken of out there in the Cunningham claims.

Mr. BRANDEIS. What page is that?

Mr. VERTREES. Page 492 of the Senate document.

Mr. BRANDEIS. Thank you.

Mr. VERTREES. I will give the whole in evidence, but I will read only a part of it. After repeating what Mr. Cunningham had written him about what they are doing, how they are managing the coal cases, he says [reads]:

You ask whether these coal claimants can form a voluntary association to jointly construct a tunnel without prejudicing their right to secure title from the Government before said title is actually secured. You enclosed a pencil sketch indicating the location of the various claims and also situation of proposed tunnel. You state the ground is very mountainous and abrupt, making it impracticable to open each claim with shaft or tunnel because of inability to reach them with roads or trams.

The diagram indicates 35 claims, all of which, with one exception, embrace 160 acres, which lie on a mountain side with a south slope. The proposed tunnel is indicated as commencing at the lower side of this group of claims and to be driven in a northerly direction through the central portion of the group, cutting the coal measures on the higher claims apparently at considerable depth and traversing both lower and upper measures indicated by the outcrops upon the surface. The claims indicated upon the diagram are given names and are identical with coal claims, surveys of which number 37 to 71, inclusive, were approved by the United States surveyor-general for the district of Alaska on December 16, 1905, and reported by him to this office December 19, 1905.

You are advised that it is contrary to the practice of this office to undertake to render an authoritative or binding opinion in any case other than one in which the record has been regularly transmitted for consideration and action. However, in view of the interests involved, it is not deemed improper to state that, while the construction of tunnel such as proposed would call for close scrutiny of each entry made for claims in this group as to the good faith of the entryman and as to whether he was securing his claims strictly for his own use and not directly or indirectly for the use or benefit of others or of an association or corporation, yet it is believed that the construction of the proposed drainage and working tunnel by a voluntary association to be composed of a portion or all of the coal claimants interested in the group, by means of their own personal and private funds, would not militate against the making of coal entries by the several claimants and would not imperil their right to secure patent upon said entries. The issuance of patent would, without doubt, be delayed until a full investigation of the matter could be had and the Land Department be fully advised as to all the facts in the premises. .

Very respectfully,

J. H. FIMPLE,
Assistant Commissioner.

The complete letter is as follows:

Mr. CLARENCE CUNNINGHAM,
Wallace, Idaho.

SIR: I am in receipt of your letter of February 6, 1906. You state that pursuant to the act of April 28, 1904 (33 Stats., 525), relating to the acquiring of coal lands in Alaska, you, for yourself and as agent for a number of others, secured several claims of 160 acres each and have had the same surveyed and have expended a large amount in the development work and are now publishing notices as basis for entry and propose at the proper time to submit proof and make entry. Each claimant is paying for the work done on his own claim and expects to derive all the benefit therefrom, but owing to the nature of the country and in the interest of economical mining it will be necessary to run a long crosscut tunnel to reach the coal measures at considerable depth in order that the coal veins may be cut and proper drainage secured. The cost of this work will be too great for any individual to bear alone; and its benefits accrue equally to all claims located on the belt after they are fully opened by affording drainage and haulage way. You ask whether these coal claimants can form a voluntary association to jointly construct a tunnel without prejudicing their right to secure title from the Government before said title is actually secured. You inclosed a pencil sketch indicating the location of the various claims and also situation of proposed tunnel. You state the ground is very mountainous and abrupt, making it impracticable to open each claim with shaft or tunnel because of inability to reach them with roads or trams.

The diagram indicates 35 claims, all of which, with one exception, embrace 160 acres, which lie on a mountain side with a south slope. The proposed tunnel is indicated as commencing at the lower side of this group of claims and to be driven in a northerly direction through the central portion of the group, cutting the coal measures on the higher claims apparently at considerable depth and traversing both lower and upper measures indicated by the outcrops upon the surface. The claims indicated upon the diagram are given names and are identical with coal claims, surveys of which number 37 to 71, inclusive, were approved by the United States surveyor-general for the district of Alaska on December 16, 1905, and reported by him to this office December 19, 1905.

You are advised that it is contrary to the practice of this office to undertake to render an authoritative or binding opinion in any case other than one in which the record has been regularly transmitted for consideration and action. However, in view of the interests involved, it is not deemed improper to state that, while the construction of tunnel such as proposed would call for close scrutiny of each entry made for claims in this group as to the good faith of the entryman and as to whether he was securing his claims strictly for his own use and not directly or indirectly for the use or benefit of others or of an association or corporation, yet it is believed that the construction of the proposed drainage and working tunnel by a voluntary association to be composed of a portion or all of the coal claimants interested in the group, by means of their own personal and private funds, would not militate against the making of coal entries by the several claimants and would not imperil their right to secure patent upon said entries. The issuance of patent would, without doubt, be delayed until a full investigation of the matter could be had and the Land Department be fully advised as to all the facts in the premises.

Very respectfully,

J. H. FIMPLE,
Assistant Commissioner.

Did you know of the existence of that letter when you arranged to send coal experts to Alaska to make a physical examination of the land, or a field examination?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you not, nevertheless, in your letter of instructions to Mr. Wingate, give special instructions with regard to this tunnel as one of the things to be looked up as evidence of a joint undertaking?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Have you seen Mr. Wingate's report?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You don't know, then, what he reported?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You haven't any information?

Mr. GLAVIS. Why, just hearsay.

Mr. VERTREES. Do you know about Mr. Kennedy's report?

Mr. GLAVIS. I heard him testify at the hearings in the Cund cases.

Mr. VERTREES. Did you hear Mr. Fisher testify?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Didn't you know this much—isn't it a fact that you called for Mr. Wingate to be sent out by the Forestry Service and the Land Office sent out Mr. Kennedy, as an expert, and those two men went out there under special instructions, or under special instructions to Mr. Wingate from you, to make an examination and report, field examination—a physical examination—may use that expression—of those lands, and they each made a report?

Mr. GLAVIS. Yes, sir; I sent Mr. Kennedy out there, and the Forestry Service secured the services of Mr. Wingate; and I asked me to give him, or write him, a letter of instructions. Mr. Wingate and Mr. Kennedy could cooperate in their work.

Mr. VERTREES. What did you want him to do?

Mr. GLAVIS. Well, my recommendation to him—I only prepared the letter for the signature of the district forester out in Portland.

Mr. VERTREES. You didn't sign the letter of instructions?

Mr. GLAVIS. Lets see—I know he asked me to write it, but I don't think I did; then he O. K.'ed all I said. Anyway, it was at the request of the Forester; that was it.

Mr. VERTREES. What did you send him for; what did you want him to do?

Mr. GLAVIS. Why, to go up there and make a field examination of the lands and the Forestry Service, as I recall at this time, wanted him to make certain the coal character of the lands on a lot of other claims in the coal reserve of the forest reserve.

Mr. VERTREES. Was it necessary, for this purpose, for you to call him or inform him before he went what the evidence, the affidavits of the claimants, showed in reference to this land if you sent him to make a field examination or just to report on the physical conditions?

Mr. GLAVIS. It indicated to him the general facts that were secured at that time—the field examination was made with a view of further corroborating, if the facts existed, these facts which he already had, showing the formation and operation of a group of claims as an association.

Mr. VERTREES. What I am getting at is, was he sent out to make a fair, clean, impartial investigation in the hope that he would corroborate it, or was he virtually given such instructions as to induce him to make a report such as you wanted, if possible?

Mr. GLAVIS. No, sir; I never, in my career as a special agent in charge of the field division, instructed anybody to make an investigation of any claim or claims, and I think Mr. Wingate would testify to that fact, that I told him all that I wanted was the facts in the matter.

Mr. VERTREES. Was it necessary for you then to tell him that the people had sworn in the affidavits about their rights; that was what I want to know?

Mr. GLAVIS. Yes. It has always been our practice when we have another man on a case to detail the facts up to that time.

Mr. VERTREES. This is not another man in the case as special agent; this is a coal expert?

Mr. GLAVIS. He is a man who is going to do work in the case. He is no special agent; no, sir; he is an assistant in the case.

Mr. VERTREES. I can very well appreciate where you are investigating the facts in a case and another man takes your place that you can make a statement to him of the case and bring it up to that point, but now this man was sent as a coal expert to bring you back a judgment as to the situation there and to do justice to the Government and these people. I will ask you if it was necessary in order to get that sort of a report for you to go on and instruct him and inform him as to the state of the proof in the case and what the evidence showed as to a combination?

Mr. GLAVIS. Yes, sir. Not only, particularly as it would assist him in the field work, because it outlined what we wanted him to examine in the field, that is the tunnels, and showing that this group of claims was being operated jointly, if such a fact existed; and furthermore, a man going up in Alaska, or anywhere else, if he is familiar with the facts, he meets people and then can secure information from them which is valuable, providing he knows the case sufficiently to comprehend what information a person would be willing to give him.

Mr. VERTREES. In your letter of instructions, did anything like this occur: "The majority of the claimants have also made affidavit that it was their expectation and understanding among themselves that the claims would be combined and worked jointly for the benefit of each other, share and share alike?"

Mr. GLAVIS. I don't recall that particular statement, but I would probably make that because that was the fact in most of the affidavits.

Mr. VERTREES. The point I am on, Mr. Glavis, if you wanted a fair and impartial report, would you give him that instruction, and tell him what the majority said without telling him what the minority stated, or would you tell him to go and examine the tunnel and the field and report to you the truth?

Mr. GLAVIS. I would outline the case to him as I did.

Mr. VERTREES. You would outline the case to him like you did?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You never saw his report. Do you not know as a matter of fact he went out there and reported there was no coal there at all—that is, no workable coal—that as a commercial proposition it was utterly worthless?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Did you ever hear of that?

Mr. GLAVIS. Yes, sir; I have heard of it.

Mr. VERTREES. You have made no mention of that heretofore?

Mr. GLAVIS. I have never been asked about it.

Mr. VERTREES. But you have mentioned Mr. Kennedy's report a good deal.

Mr. GLAVIS. No; I don't think I have gone into it deeply.

Mr. VERTREES. You have spoken repeatedly about sending him there.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You never mentioned to this committee that you sent Wingate there?

Mr. GLAVIS. No, sir. I didn't send him. The Forestry sent him.

Mr. VERTREES. Didn't you give him his letter of instruction?

Mr. GLAVIS. I prepared it at the request of the district Forester.

Mr. VERTREES. Was it not addressed to him by you and by you?

Mr. GLAVIS. Probably so; yes, sir. That letter will also state I recall it, and my recollection is very clear, that I stated I had that letter at the request of Mr. Allen, or the official who was.

Mr. VERTREES. I will read you what purports to be a copy, to me as such, and ask you to say whether it is correct [reads]

[To Mr. Schwartz.]

PORTLAND, OREG., July 31

Mr. GABRIEL WINGATE,

Care United States Forest Service, Seattle, Wash.

SIR: Mr. E. T. Allen, district forester, United States Forest Service, has asked you to proceed at once to Katella, Alaska, and cooperate with Special Agent Andrew Kennedy in the examination of coal claims within the Chugach National Forest, especially the coal entries known as the "Cunningham group."

It is Mr. Allen's desire that your work shall be in every way similar to that of Mr. Kennedy's, and with that end in view I have been asked by him to give you the following information as to the object of the examination.

The evidence already obtained shows that there are 33 to 35 coal claimants in the Cunningham group, and that these locations were made in 1903, with the understanding that after title was secured a company should be formed and each claimant would share equally excepting the agent, Mr. Cunningham, who would receive one-eighth of the entire stock of the company. Since the locations have been made each year development work has been done and approximately \$100,000 has been expended, each claimant having been assessed equally. The documentary evidence shows that during 1906 Mr. H. L. Hawkins was employed to examine the group and determine the proper method of mining thereon. It also appears that most of the money expended for the development has been used on one tunnel. The majority of the claimants have also made a statement that it was their expectation and understanding among themselves that the claims would be combined and worked jointly for the benefit of each other and share alike.

The object of the examination in the field is to determine whether or not the improvements, such as the tunnel and other work, has been made with the sole object of mining the claims as a whole, and not for the individual use and benefit of each claimant. It is presumed that your long experience and expert knowledge of mining conditions will enable you to readily determine whether this work has been done with the view to a consolidation of the claims.

There are certain points which suggest themselves to me that I will call your attention to. However, it is probable that there is much other data that you may find that I have overlooked, and it is our desire that every particle of evidence concerning the claims have been worked with a view to consolidation, be secured.

Special Agent Andrew Kennedy is a coal expert of many years' experience and is now making an examination of the claims, and it is my desire that you should cooperate with him, making separate notes, however, as a result of such examination. It is my desire that you should first definitely locate the various corners. Mr. S. N. Stoner, a special agent of my office, is in the field and is now locating various corners. In view to ascertaining the improvements thereon, but in order that you may rely on your own personal knowledge it is desired that you examine the corners personally. After examining the corners and properly locating yourself, all the improvements on each claim should be thoroughly examined and the approximate cost thereof ascertained. You should also determine whether the large tunnel now being made by Mr. Cunningham will benefit all the claims or only a few. It must be borne in mind that each of the claimants have paid an equal amount for the making of this tunnel.

There are also approximately four claims mentioned by Mr. Cunningham and Mr. Hawkins as being only valuable for the timber. These claims should be located. It is also my understanding that a great deal of the timber adjacent to the claims has been scripped by Mr. Cunningham. If such locations can also be

it is hoped that you and Mr. Kennedy do so with a view to determining whether or not the land is chiefly valuable for its timber, as it has occurred to me that perhaps this land may contain valuable coal. I also suggest that photographs of the improvements be taken.

I have to request that you show this letter to Mr. Andrew Kennedy, as it is my desire that you cooperate with each other in these examinations.

Very respectfully,

L. R. GLAVIS,
Chief of Field Division.

Approved:

E. T. ALLEN, *District Forester.*

Now, you have been informed, though you have not seen it, have you not, that this man reported that there were, just as you suggested there, four or five claims that were nothing but timber claims, and the others were worthless as to coal, or, as he expresses it, as a commercial coal proposition the land is worthless, and the same is true as of all the claims of the Cunningham group. You knew that report had been made, didn't you?

Mr. GLAVIS. I heard it had been made. He said the whole coal field wasn't any good, the whole coal field up there.

Mr. VERTREES. In point of fact Mr. Glavis, Mr. Kennedy reported otherwise, that it was all coal land, didn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. All of the 33 claims?

Mr. GLAVIS. Yes, sir. Mr. Wingate was the only person I ever heard report that there was not. Oh, you mean as to all the 33 coal claims?

Mr. VERTREES. Yes; the 33 claims?

Mr. GLAVIS. Well now, I don't recall whether he did or not.

Mr. VERTREES. You don't know about that, but you know what Mr. Wingate reported.

Mr. GLAVIS. It seems to me I know Mr. Kennedy's report in a general way. I haven't given it any thought for quite a while as to whether it included one or two of the coal claims—

Mr. VERTREES. Didn't the Geological Survey then send up a third man, Mr. Fisher, to determine the question, and didn't he report that it was all coal lands, and none of it was timber lands as reported by Mr. Wingate?

The CHAIRMAN. In compliance with the request of Mr. Brandeis, the record will show the following list covering all of the papers, documents, and reports thus far received from the Interior Department.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 4, 1910.

Schedule of papers called for by Senate Joint Committee in lists dated January 29, 1910, and February 1, 1910.

1. Paragraph 2. January 29, 1910.

(a) Copy of letter of Agent L. R. Glavis to commissioner, November 5, 1907, inclosing report of Agent H. T. Jones, dated November 1, 1907, and memorandum of H. H. S. to Murphy, "Hold pending further advice;" attached.

2. Paragraph 4. January 29, 1910.

(a) Agent H. K. Love's daily reports from June 15, 1907, to September, 1908.

(b) Agent H. T. Jones's reports from June 15, 1907, to December 31, 1909.

(c) Agent S. N. Stoner's daily reports from March, 1908, to May, 1908, and March, 1909, to December, 1909.

(d) Agent A. Kennedy's daily reports from March, 1908, to May, 1908, and 1909, to December, 1909.

(e) Agent A. R. Bowman's daily reports from April 4, 1909, to December 1909. (Special Agent Bowman did not enter upon duty until April 4, 1909.)

(f) Agent Gery's daily reports from June, 1909, to September, 1909.

(g) Agent L. R. Glavis's daily reports and expense account from March to September, 1909.

3. Paragraph 6. January 29, 1910.

Copies of telegrams to Agent Glavis, dated November 26, 1907, and December 1907. Telegram of Western Union Telegraph Company, of November 27, 1907, indicating the telegram of November 28, 1907, was undelivered, and copy of telegram from Assistant Commissioner Dennett to Glavis, dated November 27, 1907.

4. Paragraph 11. January 29, 1910.

Copies of Commissioner Richards's letter to the Secretary, dated April 1907; Agent H. K. Love's letter to the commissioner, April 25, 1906; Acting Commissioner Pollock's letter to Agent Love, June 20, 1906; Agent Love's letter to commissioner, December 6, 1906; Commissioner Ballinger's letter to Agent Love, April 1907; Agent Love's letter to commissioner, May 8, 1907; Assistant Commissioner Dennett's letter to Agent Love, May 27, 1907; Assistant Commissioner Dennett's letter to Agent Love, September 19, 1907; Assistant Commissioner Dennett's letter to Agent Love, October 3, 1907; Agent Glavis's letter to commissioner, January 22, 1908; Garfield's letter to William Loeb, jr., February 7, 1908; Agent Love's letter to the Secretary, through the commissioner, March 15, 1908; David M. Goodrich's letter to Agent Love, March 4, 1908; letter of H. N. Jasper, jr., to H. A. Brown, clerk, Secretary's office, March 10, 1908; Commissioner Dennett's letter to Agent Glavis, March 14, 1908; Agent Glavis's letter to the commissioner, March 23, 1908, attached thereto, Agent H. T. Jones's affidavit, dated March 19, 1908; Commissioner Dennett's letter to Agent Love, April 1, 1908; Agent Love's letter to the commissioner, April 16, 1908; commissioner's letter to Agent Love, April 28, 1908; Agent Love's letter to the Secretary, May 13, 1908; Agent Love's letter to Hon. R. A. Ballinger, April 28, 1908; Hon. R. A. Ballinger's letter to Agent Love, May 4, 1908; Agent Love's letter to Hon. R. A. Ballinger, May 12, 1908.

5. Paragraph 13. January 29, 1910.

Copy of Assistant Commissioner Dennett's letter to Agent S. J. Colter, September 24, 1907; Commissioner Dennett's telegram to Agent Colter, October 15, 1907; Agent Colter's letter to H. H. Schwartz, October 20, 1909, and copy of receipt of papers in Alaska coal cases turned over to S. J. Colter by A. R. Bowman on October 1909, at Chicago; Agent S. J. Colter to H. H. Schwartz, October 29, 1909; Agent S. J. Colter to commissioner, November 17, 1909; Commissioner Dennett's letter to Agent Colter, December 3, 1909; Commissioner Dennett's letter to Agent Colter, November 4, 1909; Assistant Chief of Field Service Underwood's letter to Agent Colter, October 18, 1909; commissioner's letter to Agent Colter, November 1909; telegram Agent Colter to commissioner, November 17, 1909; Commissioner Dennett's telegram to Agent Colter, November 17, 1909; Agent Colter's letter to commissioner, October 22, 1907; affidavits of George W. Miller and Walter F. Lulu Drake, sworn to before Agent Colter, October 14, 1907.

6. Paragraph 16.

Original telegram of H. K. Love to commissioner, January 11, 1908, with the envelope in which it was filed, on which is memorandum by Mr. Carr.

7. Paragraph 18.

Original patents on coal entry 17, William E. Miller; coal entry 19, B. C. Moore; coal entry 21, Alfred Page; coal entry 23, Frederick Burbidge; coal entry 25, B. Moore; coal entry 29, Arthur D. Jones; memorandum dated January 29, 1910, copy of note appearing on Division B docket of cases to be patented; 3 lot headed "Land Office, Juneau, Alaska."

8. Paragraph 19.

Copy of telegram of Commissioner Ballinger to Special Agent Love, January 1908.

9. Paragraph 20.

Copy of Commissioner Ballinger's telegram to Agent Love, January 4, 1908; telegram from Agent Love to commissioner, January 6, 1908, with envelope.

10. Paragraph 23.

Telegram of L. R. Glavis to commissioner, April 10, 1908, with memorandum made by Chief Division "N;" copy of Commissioner Dennett's telegram to Agent Glavis, April 13, 1908; copy Commissioner Dennett's letter to Agent Glavis, April 1908.

11. Paragraph 1. February 1, 1910.

Original drafts of patent on coal entries 17 and 19.

12. Paragraph 2. February 1, 1910.
Original lists Nos. 184, 185, and 186 of Mineral Division to Division B.
13. Paragraph 3. February 1, 1910.
Original letter Agent Love to commissioner, February 17, 1907 (07-35777).
14. Paragraph 4. February 1, 1910.
Original letter of Forester Pinchot to commissioner, March 15, 1907 (07-44667).
15. Paragraph 5. February 1, 1910.
Original letter of Forester Pinchot to Commissioner Ballinger, March 26, 1907 (07-52060).
16. Paragraph 6. February 1, 1910.
Original letter Commissioner Ballinger to Secretary, April 24, 1907.
17. Paragraph 7. February 1, 1910.
Original letter of Forester Pinchot to Commissioner Ballinger, May 6, 1907 (07-81363).
18. Paragraph 8. February 1, 1910.
Original letter Commissioner Ballinger to Secretary, May 10, 1907.
19. Paragraph 9. February 1, 1910.
Copies of proclamations by the President, dated July 23, 1907, September 18, 1907, and February 23, 1909.
20. Paragraph 10. February 1, 1910.
Copies of H. R. Bill 11490 and letter of Paul H. Sroat, W. B. Moore, W. L. Wells, committee of Siletz settlers, to Secretary Ballinger, August 4, 1909; letter of Finney to Hon. Secretary, no date; Secretary Ballinger's letter to Senator George E. Chamberlain, January 10, 1910; Secretary Ballinger's letter to Morse, Wells, and Sroat, September 9, 1909; letter of J. O'B. Scobey to Hon. R. A. Ballinger, January 6, 1910; letter of Hon. R. A. Ballinger to J. O'B. Scobey, January 12, 1910; newspaper clipping entitled "Other Side Told in Siletz Dispute," Portland Oregonian, January 2, 1910; newspaper clipping entitled "Hawley is Friend. Has Bill Pending to aid bona fide Siletz Settlers," same date; newspaper clipping headed "Siletz Contests will be Delayed. Ballinger Issues Order after Talk with Oregon Delegation," dated January 5, 1910; newspaper clipping headed "Proposed Law is Radical. Senator Nelson would make changes in Land Legislation," dated January 5, 1910; original letter of Tracy Newman to Mr. Pierce, January 10, 1910; copy of Assistant Secretary's letter to Tracy Newman, January 19, 1910; copy of H. R. Bill 11490; original letter of Hon. W. C. Hawley to Secretary Ballinger, December 2, 1909; copy of Secretary Ballinger's letter to Hon. W. C. Hawley, December 3, 1909; original letter of A. W. Lafferty to Secretary Ballinger, December 14, 1909; original letter A. W. Lafferty to Secretary of the Interior, December 14, 1909; copy of Secretary Ballinger's letter to A. W. Lafferty, December 20, 1909; copy of Secretary Ballinger's letter to Hon. W. C. Hawley, January 12, 1910.

THE SECRETARY OF THE INTERIOR,
Washington, February 5, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress.

SIR: Complying with request contained in your communication of February 1, 1910, inclosing a list of copies of documents, correspondence, etc., in the files of this department which the Joint Committee of Congress, created by H. J. Resolution 103, Public No. 9, desire produced for its use in the investigations now in progress, I hand you herewith:

1. (a) Copies of records and papers in the Department of the Interior, General Land Office, relating to the Cunningham Alaska coal cases from August 24, 1909, to February 15, 1910. (Correspondence relating to said cases prior to that time is printed in Senate Document No. 248.) (b) Copies of papers and letters in the Department of the Interior and the General Land Office relating to application of W. G. Whorf for the Port Graham coal claim, Survey No. 315, Cook Inlet, Alaska. (The proof papers in this case have not been received from the local land office.) (c) Copies of records and papers in the Department of the Interior and the General Land Office relating to the Alaska Petroleum and Coal Company and its application for coal lands in Alaska. (d) Copies of records and papers in the Department of the Interior and the General Land Office relating to the so-called Hartline group of coal claims. (e) Copies of records and papers in the Department of the Interior and the General Land Office relating to the so-called Green group. (f) Copies of correspondence between Mr. R. A. Ballinger and Mr. M. P. Kinkaid with reference to Mr. Kinkaid's purchase of an interest in the Green group. (g) Copy of letter from Mr. R. A. Ballinger to Mr. Harry White,

November 17, 1908, with reference to construction of Alaska coal act of M
(h) Copy of part of status record of Special Agent H. K. Love relating to
duties. (i) Copy of private file of Mr. R. A. Ballinger containing copi
spondence with former Special Agent H. K. Love. (j) Copy of reports
General Land Office by Special Agent H. T. Jones, August 10, August 1
vember 1, 1907.

2. (a) Copy of file No. 2-6, Department of the Interior, containing comm
and papers on file relating to railroad right-of-way applications along the
River, Oregon. (b) Copy of material records and papers on file in the Ge
Office relating to railroad right-of-way applications along the Deschutes
gon, including decision of Secretary Ballinger, April 21, 1909.

The papers transmitted have, so far as possible, been arranged in orderly
with tables of contents attached. The other papers and records called
communication and specified in the accompanying memorandum are being
and will be furnished to the committee as promptly as circumstances will

Very respectfully,

R. A. BALLINGER,

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 1, 1909.

HON. KNUTE NELSON,
*Chairman Joint Committee on Investigation of the Department of the Interior
Forest Service, United States Senate.*

MY DEAR SENATOR: I send you herewith correspondence had between
linger and myself from March 4, 1908, to March 4, 1909. I have been un
the original letter under date of March 31, 1908. I asked Secretary Ball
could not furnish me with a copy of the original letter which he wrote me,
so, and this is the copy which I hand you herewith. If I can discover
correspondence passing between Mr. Ballinger and myself during the time
tion, I will immediately send same to your committee.

Very respectfully,

FRED DENNETT, Commissioner.

THE SECRETARY OF THE INTERIOR,
Washington, February 1, 1909.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress.

SIR: Complying with request contained in your communication of Febru
inclosing a list of copies of documents, correspondence, etc., in the files of t
ment, which the joint committee of Congress, created by House joint reso
Public No. 9, desire produced for its use in the investigation now in progr
the honor to hand you herewith:

1. Copy of records and papers in the General Land Office and the Depart
Interior relating to the so-called "Doughten group" of Alaska coal claim

2. Copy telegram Commissioner Ballinger to Special Agent Love, Janu
with reference to report on certain entries of the Cunningham groups.

3. Copy report Special Agent Love, November 12, 1907, on Juneau coal e
to Ignatius Mullen.

4. Copy of Interior Department file No. 2-24, 1, 2, 3, and Exhibit "A,"
letters and correspondence relating to Alaska coal lands from May 16, 1907,
ber 28, 1909.

5. Copy of Interior Department file No. 2-107, parts 3 and 4, relating t
legislation, covering the period from November 23, 1907, to February 11

6. Copy of letters to Attorney-General in re cooperative certificates for r
work, act June 17, 1902, and copy of opinions of the Attorney-General
and September 9, 1909, and of the Comptroller of the Treasury, Novemb

7. (a) Copy of Interior Department file No. 2-115, relating generally
power sites and covering the period from December 14, 1906, to Novemb

(b) Copy of Interior Department file No. 2-115, parts 1, 2, and 3, water
withdrawals, covering the period from October 24, 1908, to Decembe

(c) Copy Interior Department file No. 2-115, water-power restoration, co
period from March 4, 1909, to December 30, 1909.

Tables of contents have been attached to each of the files submitted.

Very respectfully,

R. A. BALLINGER,

OFFICE OF THE SECRETARY OF THE INTERIOR,
Washington, February 12, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress.

SIR: In further compliance with your letter of February 12, 1910, I have the honor to transmit herewith the papers specified in paragraph 17 of the printed schedule accompanying same, viz:

Copy of letter from Mr. Gifford Pinchot to Mr. R. G. Valentine, Commissioner of Indian Affairs, dated October 7, 1909, and copy of Mr. Valentine's reply thereto, dated October 8, 1909, with copy of opinion of the Comptroller of the Treasury dated September 3, 1908.

Very respectfully,

R. A. BALLINGER, *Secretary.*

THE SECRETARY OF THE INTERIOR,
Washington, February 12, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress..

SIR: I have the honor to acknowledge receipt of your letter of February 12, 1910, containing list of documents and papers called for by attorney for Mr. Gifford Pinchot.

In reply I have to advise as follows:

1. Copy of letter from Representative Mondell to Secretary Garfield, February 25, 1909, and copy of letter of Director Newell to Mr. Mondell, February 23, 1909, both with reference to withdrawal of lands in Wyoming under the reclamation act, will be found on pages 10 and 11 of part 1, file 2-115, Water-power site—General, submitted to the committee February 8, 1910. So far I have been unable to locate copy of letter alleged to have been written March 2, 1909, by Secretary Garfield to Representative Mondell. If found, same will be promptly furnished.

2. Copies of all recommendations by the Reclamation Service to the Secretary of the Interior looking to the restoration of lands withdrawn for power-site purposes are contained in part 1, file 2-115, Water-power sites—Restorations, furnished to the committee February 8, 1910.

3, 4, 5, and 6. Will be furnished as soon as they can be located.

7. Copy of brief in favor of executive withdrawals, submitted March 29, 1909, by the Reclamation Service, will be found on pages 13 to 17, part 1, file 2-115, Water-power sites—General, furnished to the committee February 8, 1910.

8. Will be furnished as soon as possible.

9. Copy of letter of April 20, 1909, directing the Director of the Geological Survey to investigate water-power sites with a view to temporary withdrawals will be found on page 30, file 2-115, part 1, Water-power sites—General, furnished to the committee February 8, 1910. The records do not indicate that this letter was first directed to the Reclamation Service.

10. Letter May 10, 1909, from James R. Garfield to the Forester is not in this department. It is presumably either in the files of the Forest Service or in the personal possession of Mr. Pinchot.

11. Copy of letter Secretary Ballinger to the Attorney-General asking for opinion as to ranger station withdrawals will be furnished as soon as possible.

12. Have been called for and will be furnished as soon as possible.

13. Have been called for and will be furnished as soon as possible.

14. Not in this department. Presumably on file in the Forest Bureau.

15. Not in this department. Presumably on file in the Forest Bureau.

16. Report of Forester to Secretary of Agriculture, July 23, 1909. Copy will be found on pages 66 to 86, file 5-152, part 1, transmitted herewith.

17. Has been called for and will be transmitted as soon as received.

18. Herewith is transmitted file 5-152, parts 1 and 2, containing copies of entire correspondence relating to the Indian reservation—Forestry cooperative agreement.

19. I know of no letters written by myself, my private secretary, or anyone else on my behalf in "December, 1909, and January, 1910, to publishers, editors, or reporters of newspapers asking or suggesting the communication to this committee of complaints against the Forest Service."

Since receipt of your letter, Mr. D. M. Carr, my private secretary, has shown me copy of a letter which he addressed, without my knowledge, to George Sherman, editor of the Montgomery Times, Mount Ida, Ark., and I transmit copy herewith, together with copies of the official correspondence had with Mr. Sherman.

Very respectfully,

R. A. BALLINGER, *Secretary.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
OFFICE OF THE COMMISSIONER,
Washington, February 14, 1910.

Hon. KNUTE NELSON,
United States Senate.

MY DEAR SENATOR: I am forwarding to you carbon copies which I have found of letters dictated by me between March 4, 1908, and March 4, 1909. As I stated before, the stenographer's notebooks were not retained; this is the best I can do.

Very respectfully,

FRED DENNETT,
Commissioner.

1908.

Aug. 7. Fred Dennett to Ralph H. Cameron.
Aug. 12. Fred Dennett to W. A. Sturges.
Aug. 12. Fred Dennett to W. S. Sturges.
Aug. 13. Fred Dennett to F. A. Twichell.
Aug. 17. Fred Dennett to M. D. McEnery.
Aug. 21. Fred Dennett to H. F. Hunter.
Aug. 24. Fred Dennett to F. A. Twichell.
Aug. 25. Fred Dennett to B. Prom.
Aug. 28. Fred Dennett to James T. Macey.
Aug. 31. Fred Dennett to Ralph H. Cameron.
Sept. 2. Fred Dennett to H. F. Hunter.
Sept. 4. Fred Dennett to M. S. Sietz.
Sept. 4. Fred Dennett to P. J. McCumber.
Sept. 15. Fred Dennett to T. F. Marshall.
Sept. 23. Fred Dennett to Henry E. Reed.
Sept. 24. Fred Dennett to E. J. Turner.
Nov. 3. Fred Dennett to Joe Mitchell Chapple.
Nov. 16. Fred Dennett to Miss Irene Farup.
Nov. 16. Fred Dennett to National Organization Alpha Phi.
Nov. 16. Fred Dennett to F. P. Knott.
Nov. 18. Fred Dennett to F. A. Twichell.
Nov. 21. Fred Dennett to Miss Angier.
Nov. 25. Fred Dennett to Samuel M. Croft.
Nov. 27. Fred Dennett to S. M. Meek.
Nov. 27. Fred Dennett to John M. Boutwell.
Nov. 28. Fred Dennett to Mr. Gardner.
Nov. 28. Fred Dennett to Frank H. Hitchcock.
Dec. 7. Fred Dennett to William Loeb, jr.
Dec. 10. Fred Dennett to M. H. Brennan.
Dec. 10. Fred Dennett to John Burke.
Dec. 15. Fred Dennett to E. F. Bladwin.
Dec. 15. Fred Dennett to Emory R. Johnson.
Dec. 18. Fred Dennett to H. F. Hunter.
Dec. 26. Fred Dennett to Henry B. F. Macfarland.
Dec. 29. Fred Dennett to A. G. Elston.
Dec. 29. Fred Dennett to E. F. Bladwin.
Dec. 30. Fred Dennett to W. W. Washburn, jr.

1909.

Jan. 18. Fred Dennett to Harry F. Hunter.
Jan. 18. Fred Dennett to N. C. Young.
Jan. 18. Fred Dennett to Thomas Cooper.
Jan. 22. Fred Dennett to Reed Smoot.
Jan. 26. Fred Dennett to R. H. Cameron.
Jan. 26. Fred Dennett to C. J. Bonaparte.
Jan. 27. Fred Dennett to F. P. Knott.
Jan. 28. Fred Dennett to Ralph H. Cameron.
Jan. 28. Fred Dennett to Frank A. Twichell.
Feb. 2. Fred Dennett to Wm. H. Rideing.
Feb. 15. Fred Dennett to C. J. Bonaparte.
Feb. 16. Fred Dennett to Wm. H. Rideing.
Feb. 20. Fred Dennett to J. H. Ballinger.
Feb. 20. Fred Dennett to Percy F. Smith.
Feb. 20. Fred Dennett to Frank L. Spalding.
Feb. 25. Fred Dennett to E. A. Hartley.
Feb. 26. Fred Dennett to Emory R. Johnson.
Mar. 3. Fred Dennett to Brainard Avery

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 14, 1910.

Schedule of papers called for by Senate joint committee in lists dated January 29, 1910, and February 1, 1910.

Paragraph 4. January 29, 1910.

(h) Daily report book of A. R. Bowman, April 4, 1909, to June 30, 1909.

(i) Daily report book of Raymond E. Gery, April 24, 1909, to June 30, 1909. L. R. Glavis, November 1, 1906, to April 30, 1908. Horace T. Jones, March 28, 1906, to June 15, 1909. Andrew Kennedy, January 25, 1908, to December 24, 1909. S. N. Stoner, January 1, 1908, to June 30, 1909.

Paragraph 9. Carbon copy of personal letter of Louis R. Glavis to H. H. Schwartz, February 27, 1908, at Portland, Oreg. This carbon was delivered to Agent Christensen by Glavis on November 5, 1909, and Mr. Schwartz has no recollection other than this of the letter.

Paragraph 22. Letter from United States Attorney Elmer E. Todd to Louis R. Glavis, May 18, 1908.

WASHINGTON, D. C., February 14, 1910.

Following papers received from the Department of the Interior through Mr. Vertrees:

(1) Letter of R. A. Ballinger to register and receiver United States land office, Juneau, Alaska, December 23, 1908, with copy of letter of Commissioner Dennett to R. A. Ballinger, December 17, 1908, attached.

(2) Letter of Clarence Cunningham to register and receiver United States land office, Juneau, Alaska, September 26, 1907.

(3) Letter of Clarence Cunningham to P. M. Mullen, Juneau, Alaska, December 11, 1907.

(4) Telegram from Clarence Cunningham to register and receiver United States land office, Juneau, January 8, 1908.

(5) Letter of Clarence Cunningham to J. W. Dudley, March 10, 1908.

(6) Letter of Clarence Cunningham to register and receiver United States land office, Juneau, Alaska, March 14, 1908.

(7) Letter of Clarence Cunningham to register and receiver United States land office, March 19, 1908.

(8) Letter of Clarence Cunningham to P. M. Mullen, Juneau, Alaska, April 13, 1908.

(9) Letter of Clarence Cunningham to J. W. Dudley, Juneau, Alaska, May 9, 1908.

(10) Letter of James D. Finch to register United States land office, June 3, 1908.

(11) Letter of Walter M. French to J. W. Dudley, Juneau, Alaska, April 19, 1909.

(12) Letter of M. A. Green to Hon. John W. Dudley, Juneau, Alaska, January 7, 1909.

(13) Letter of M. A. Green to Hon. John W. Dudley, Juneau, Alaska, April 23, 1909.

(14) Letter of H. R. Harriman to Hon. John W. Dudley, United States land office, Juneau, Alaska, March 12, 1908.

(15) Letter of Arthur D. Jones to P. M. Mullen, receiver and special district agent, United States land office, Juneau, Alaska, January 7, 1908.

(16) Letter of Arthur D. Jones & Co. to P. M. Mullen, receiver, United States land office, Juneau, Alaska, January 11, 1908.

(17) Letter of Wendell McLaughlin to recorder United States land office, Juneau, Alaska, December 31, 1906.

(18) Letter of Thomas Payne to Hon. John W. Dudley, register, United States land office, Juneau, Alaska, August 3, 1907.

(19) Letter of Wm. Sulzer to register, general land office, Juneau, Alaska, May 23, 1908.

(20) Letter (unsigned), to register and receiver, land office, Juneau, Alaska, April 3, 1908.

(21) Letter of A. H. Wheatley to Hon. P. M. Mullen, receiver, general land office, Juneau, Alaska, January 4, 1907.

(22) Letter of A. H. Wheatley to Hon. P. M. Mullen, receiver, general land office, Juneau, Alaska, December 30, 1907.

(23) Letter of W. S. Yearsley to register, land office, Juneau, Alaska, December 23, 1907.

(24) Copy of letter of Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska, January 15, 1908.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 15, 1910.

Schedule of papers called for by Senate Joint Committee in lists dated January 29, 1910, and February 1, 1910.

Paragraph 3. Original letter of L. R. Glavis to Commissioner, November 12, 1907, all other papers relating to soldier's additional final certificate No. 69, Juneau.

Paragraph 4. Daily report book of Agent Horace T. Jones from June 16, 1909, June 30, 1909.

Paragraph 8. Letters and papers which were in the Juneau, Alaska, land of relating to the Cunningham claims:

George W. H. White, April 20, 1905.
Torger A. Feed, June 1, 1905.
A. H. Stracey, June 3, 1905.
Torger A. Feed, June 4, 1905.
A. H. Stracey, June 12, 1905.
A. H. Stracey, June 12, 1905.
A. H. Stracey, June 12, 1905.
Torger A. Feed, June 19, 1905.
W. V. Rinehart, July 3, 1905.
A. H. Stracey, July 11, 1905.
Torger A. Feed, July 11, 1905.
P. L. Petersen, July 11, 1905.
Torger A. Feed, July 11, 1905.
Walfred Dalgren, July 13, 1905.
Torger A. Feed, July 15, 1905.
W. V. Rinehart, July 17, 1905.
W. V. Rinehart, August 1, 1905.
M. A. Green, August 8, 1905.
W. V. Rinehart, August 9, 1905.
Torger A. Feed, August 15, 1905.
W. V. Rinehart, August 31, 1905.
Torger A. Feed, September 2, 1905.
W. V. Rinehart, September 8, 1905.
Charles F. Munday, September 14, 1905.
W. V. Rinehart, October 6, 1905.
C. Christopher, October 27, 1905.
C. Christopher, November 1, 1905.
S. C. Chezum, October 30, 1905.
J. H. Caldwell, November 23, 1905.
C. Christopher, December 7, 1905.
A. H. Stracey, December 12, 1905, and list of 35 names.
C. Christopher, January 10, 1906.
C. Christopher, January 25, 1906.
O. L. Willoughby, February 18, 1907.
M. A. Green, February 19, 1907.
W. V. Rinehart, February 21, 1907.
E. J. Rathbun, February 25, 1907.
E. J. Rathbun, February 25, 1907.
M. A. Green, April 24, 1907.
Morris D. Leehey, May 16, 1907.
E. J. Rathbun, June 15, 1907.
M. A. Green, June 20, 1907.
W. V. Rinehart, August 2, 1907.
Archie W. Shiels, August 24, 1907.
G. T. Barrett, October 30, 1907.
Phillip McElhone, May 1, 1908.
Truman G. Palmer, May 19, 1908.
George Simmonds, May 22, 1908.
E. C. Mears, July 8, 1908.
S. C. Chezum, September 26, 1908.
Charles F. Munday, December 17, 1908.
M. A. Green, December 26, 1908.
Charles F. Munday, March 31, 1909.
O. Morford, April 2, 1909.

H. Harriman, April 2, 1909.

Raymond Brown, May 13, 1909.

Paragraph 14. Original report of H. T. Jones to L. R. Glavis, dated December 2, 1907.

Paragraph 17. All the papers relating to the grants of rights of way to the Des Chutes River Railroad Company, including land office papers in serial The Dalles 01309. These papers were listed on February 1, 1910, but copies of the entire record were made to be retained in the files of the land office, and such copies were not finished until the afternoon of February 14, 1910.

The CHAIRMAN. As some of the members of the committee have engagements, and as it is now 5 o'clock, the committee will adjourn until to-morrow at 2 o'clock p. m.

(Accordingly, at 5 o'clock p. m., the joint committee adjourned until to-morrow, February 16, 1910, at 2 o'clock p. m.)

WEDNESDAY, FEBRUARY 16, 1910.

**JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., February 16, 1910.**

The Joint Committee to Investigate the Interior Department met pursuant to adjournment at 2 p. m.

Present: Senators Nelson (chairman), Flint, Sutherland, Root, Fletcher, and Purcell; Representatives Olmsted, Denby, Madison James, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis D. Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will come to order. A quorum is present and Mr. Glavis will please take the stand and the cross-examination will proceed.

LOUIS R. GLAVIS—Cross-examination resumed.

Mr. VERTREES. Mr. Glavis, you were asked on yesterday, among other things, when the entrymen of the Cunningham group entered and put up their money, and you were not able to give it definitely. I call your attention to page 175 of Senate Document No. 248, and ask you if it does not state there exactly; and then state, that it may get into the record, just when they did that, by months; you need not individualize.

Mr. GLAVIS. That was all during the year 1907, and then I will give it by months—February 26, March 13—do you want the numbers?

Mr. VERTREES. No; just the months.

Mr. GRAHAM. 1907, the second column, is the one, is it?

Mr. GLAVIS. Yes, sir; March 13, 1907—

The CHAIRMAN. I should think that it would be sufficient to say that that is a correct list, and put it in the record.

Mr. VERTREES. It will be sufficient, if he says so. I was thinking that if he brought them up now it would save reference; however, I defer to the wishes of the committee.

The CHAIRMAN. I only make that suggestion because I think it would shorten it.

Mr. GLAVIS. There is only April, 1907, to October, 1907.

Mr. VERTREES. There are three in October, 1907.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And all the others are in April, or prior.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In your testimony you have spoken of it as being regarded as the great value of a field examination of the Alchermerties, particularly the Cunningham group.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. With whom did that idea originate, Mr. GLAVIS?

Mr. GLAVIS. I think that I first had it in mind, and then Mr. Schwartz and I discussed it afterwards.

Mr. VERTREES. So that you might say that it originated with you, might you not?

Mr. GLAVIS. I am not sure as to that.

Mr. VERTREES. Well, give us your best recollection about it.

Mr. GLAVIS. As I recall it, I suggested the field examination in a letter to Mr. Schwartz written in February, 1908, and then in the spring, when Mr. Schwartz was out there, we discussed it with him, going over the Cunningham journal.

Mr. VERTREES. So that means that it was your recollection that it originated with you?

Mr. GLAVIS. Yes, sir; I am not positive about it, though.

Mr. VERTREES. I know you are not positive; I said you were not positive. I wanted it one way or the other. Do you think it did not?

Mr. GLAVIS. I think it did.

Mr. VERTREES. Now, look at pages 153 and 154 of the record. If you did not say that it originated with Mr. Schwartz, it is at the bottom of page 153 and the top of 154 of the record of the document but the evidence. I always refer to that as the record, to the other as the Senate document.

Mr. GLAVIS (after examining). Well, that refers to the correspondence that we had in the spring, but, as I recollect it, I wrote him in February.

Mr. VERTREES. Then when you said that Mr. Schwartz called your attention to the necessity of bringing out this particular document, did not mean that it originated with him, but that it originated with you?

Mr. GLAVIS. I mean that it did at that time, because I distinctly remember that I went through the Cunningham journal, that is, my attention to how the field examination would strengthen the record evidence; but in February, before I had secured the Cunningham journal, I think I wrote him then.

Mr. VERTREES. I did not ask you about originating at that particular time, but when did it originate—meaning the first?

Mr. GLAVIS. The first time it entered my mind, do you mean?

Mr. VERTREES. Did not Mr. Schwartz suggest it?

Mr. GLAVIS. No, sir; I think I wrote him in February, 1908, on my suggestion.

Mr. VERTREES. So that is not what this means at page 153?

Mr. GLAVIS. Yes, sir; it is. I suggested that at that time, prior to that conversation. That testimony referred to a date at a later date than February, 1908.

Mr. VERTREES. Where is that letter that you wrote?

Mr. GLAVIS. I do not know where it is.

Mr. VERTREES. Did you keep a copy of it?

Mr. GLAVIS. It would be in the files, I think—

Mr. BRANDEIS. Mr. Vertrees, that is one of the letters that we called for, and which is contained in the list furnished on February 14, 1910, and referred to on page 639 of the testimony. I think it must be the letter of February 27, 1908, appearing on page 639. If Mr. Sleman will produce that package, I think I may be enabled to find it.

Mr. VERTREES. Well, he concurred with you then as to the necessity or propriety of that examination, did he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, in point of fact, is it not true that Mr. Schwartz had the further idea of having an examination of that land to determine whether it was of extraordinary value or not for the purpose of withholding it from all persons and having it for the Government; that is, for the Government's purposes on the Pacific coast?

Mr. GLAVIS. No, sir; not that I recall.

Mr. VERTREES. Please look at page 622 of Senate document. There is a memorandum of April 23, 1908. There appears a letter under date of April 8 to Mr. James R. Garfield, Secretary of the Interior, to which there is attached a memorandum. But the memorandum, as printed, precedes the letter. Does he not there say:

Chief of Field Division Glavis, Portland, Oreg., has advised this office that he will in a few days submit adverse reports against the Cunningham group of entries. If his report warrants adverse action and there is no legislation curing the irregularities charged, I advise that one or two of our coal experts examine these lands at once, to the end that if the Cunningham group of entries are canceled for fraud the lands may at once be reserved from other disposition till such time as the Government may determine whether it is desirable to retain those coal fields for government purposes.

Mr. GLAVIS. What was your question?

Mr. VERTREES. I say, did not Mr. Schwartz write that letter?

Mr. GLAVIS. It appears so from this record, but this is the first time that I have read that memorandum.

Mr. VERTREES. You have had the record all the time, have you not?

Mr. GLAVIS. Yes, sir; but I wish it understood now—if you are under any misapprehension about it—that I have not gone through this record at all; that is but very little of it. I have read some of the explanations to the President, and referred to it a lot, but I have not gone through it minutely.

Mr. VERTREES. You have now read it, and does it not indicate, so far as it indicates anything to your mind, now that you have read it, that Mr. Schwartz had in mind the purpose not of passing this land to the Cunningham group by any sort of oblique way, but really of preserving it for the Government?

Mr. GLAVIS. It appears so from this.

Mr. VERTREES. And he also had said to you that there was no necessity for the field examination in the matter of contesting the Cunningham claims?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, is it not a fact that you applied on July to Mr. Schwartz for instruments and supplies in order that this trip might be made—

Mr. BRANDEIS. Mr. Vertrees, would you like to have this February 27, 1908, before you proceed?

Mr. VERTREES. If you have it; yes, sir.

Mr. BRANDEIS. It has been produced by the clerk.

Mr. VERTREES. I will just read it. It is as follows:

A.

PORTLAND, OREG., *February*

DEAR SCHWARTZ: While in San Francisco I had the pleasure of meeting Doyle and during the few days we were together I could readily see why so much of him. Doyle has given me a great deal of information concerning Alaska coal cases, especially the Cunningham group, in Spokane. He and Cunningham and several others associated with him had shown him blueprints of coal fields, and from what they told him he was convinced that they had \$5,000 worth of work upon each claim, having only improved one or two of them. That the improvements which they had made did not amount to a great deal puts a different phase on the cases, and while I shall proceed to Spokane as directed, it will now be inadvisable to approve the entries for patent, even though unable to collect sufficient evidence to prove the conspiracy at this time. Field investigation must be made.

Doyle is anxious to accompany me to Alaska, and owing to the short season we have to make the field investigations of the large number of entries, I wish to assign him to report for duty to me on May 1, in order that he may accompany the party.

I understand that Marshall is not going to return to Oakland. Moore, acting chief, would make a very good chief of field division, being familiar with conditions in both States, and is a very energetic and competent man.

I wrote Dennett the other day in regard to various matters, the most important of which was the fact that I had learned that McNery was receiving a larger salary than the other chiefs, and asked him to give me \$2,400—not upon the ground that it was worth more, or that I am as competent as McNery, but upon the ground that if the increase is made, my expenses while working on the Alaska coal cases, while in Alaska, would be so much greater than that of the other chiefs that my compensation would be in a way a demotion.

Sincerely, yours,

Mr. H. H. SCHWARTZ,
General Land Office, Washington, D. C.

Now, you say in this letter that—

Doyle is anxious to accompany me to Alaska, and owing to the short season we have to make the field investigations of the large number of entries, I wish to assign him to report for duty to me on May 1, in order that he may accompany the party.

This letter indicates, does it not, that you yourself were to make the field investigations?

Mr. GLAVIS. I was going to Alaska on some—

The CHAIRMAN. That does not answer the question. Just answer it first and then explain it afterward.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Suppose I read you the language again exactly as it is here:

Doyle is very anxious to accompany me to Alaska, and owing to the short season we have to make the field investigations of the large number of entries, you would assign him to report for duty to me on May 1, in order that he may accompany the party.

Mr. GLAVIS. I would like to explain that answer.

Mr. GRAHAM. The Chairman told you to.

Mr. GLAVIS. When I wrote that letter I intended to go to Alaska, and intended to go through there and see the Alaska coal claimants. I was not familiar then, as much as I am now, with the conditions, and I thought there were a great many more of the claimants up there and that there would be probably more evidence available in the towns than I found afterwards, and I intended to go up there for that purpose; also, if possible, to go on the field. I was anxious to see the coal, if possible.

Mr. VERTREES. The point I wish to draw your attention to is this: That letter to Mr. Schwartz indicates that Mr. Doyle was to go with you, that you and he can personally make the field examination.

Mr. GLAVIS. Well, as it reads there, it would appear so. I wanted him to accompany me would sound that way—but that is not what I intended.

Mr. VERTREES. It sounds that way, but it means something else. Is that it?

Mr. GLAVIS. No; if I had had the opportunity I would have gone up there in the coal field, too.

Mr. VERTREES. To make the field examination?

Mr. GLAVIS. To go up there out of curiosity more than anything else.

Mr. VERTREES. The point is, are you not saying there that you yourself are going to make these field examinations? Is that not what that says?

Mr. GLAVIS. That sounds that way, but it was not in my mind. I did not intend to convey the impression to Mr. Schwartz that I felt competent to make a field examination and testify as an expert.

Mr. VERTREES. Was Mr. Doyle a coal expert?

Mr. GLAVIS. No, sir; but he was a man who had had mining experience; he had been connected with mines for years, and also had been operating a mine in the Coeur d'Alene district, or was at that time.

Mr. VERTREES. Was that experience sufficient to make you believe that he was sufficiently expert to make this coal investigation?

Mr. GLAVIS. No, sir; but he was to assist Mr. Andrew Kennedy, who was a coal expert, and I felt that both of them, with varied experience, would make a very good combination.

The CHAIRMAN. I suggest that letter be marked "Exhibit A," the one just read.

(The letter is accordingly marked.)

Mr. VERTREES. So, although you requested Mr. Doyle should be assigned to report for duty to go with you, it was not because he was an expert?

Mr. GLAVIS. Yes, sir; it was because he was a mining expert, not because he was a coal expert.

Mr. VERTREES. I mean you were going there, and the field examination that you were going to make of these properties was for coal, was it not?

Mr. GLAVIS. Yes, sir; not only as to the coal being there, but also as to the manner in which the attempts were being made to mine it.

Mr. VERTREES. Well, Mr. Glavis, let us understand that now—and I am going to keep questioning you until we do find out just how it is.

You have previously stated to this committee that the reason you did not go there was because you were not an expert and you did not feel yourself competent to make the field examination did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I want to know if Mr. Doyle had sufficient experience to make him a competent expert to go there for that purpose?

Mr. GLAVIS. Yes, sir; he was, if he went there in connection with Andrew Kennedy, who was going to accompany the party.

Mr. VERTREES. I did not ask you about Andrew Kennedy; I was asking you about Mr. Doyle and his capacity—whether this was the case in which you and Doyle, because he was an expert, were to examine it or not?

Mr. GLAVIS. I do not say in the letter that Mr. Doyle and I were going.

Mr. VERTREES. I know you do not; but I am asking, though, you had mentioned Mr. Doyle, why you wanted him to go?

Mr. GLAVIS. Because he was a mining man, a mining prospector and operator of mines, and I felt that in examining the mines and coal land the testimony as to the improvements would be valuable showing that there was an understanding, and that they were working them jointly; that the improvements were being made with them in view.

Mr. VERTREES. Now, recurring to the letter, did you not request that he be sent to you to report by May 1, because of the shortness of the season in which you would have to make the field investigation?

Mr. GLAVIS. Yes, sir. At this time I thought the conditions in Alaska would permit a field investigation about the 1st of May, after I made a trip up there and found the conditions to be such that I learned that I was mistaken.

Mr. VERTREES. I find on page 282 of Senate Document No. 10, a telegram from you, dated July 6, addressed to the commissioner of the Geological Survey—or rather that they be requested to—"furnish a plane table outfit, consisting of large table traverse board, one transit, two aneroid, one alidade, six sheets of celluloid paper, for examination of Alaska coal fields. Ship same by express at once."

You sent that, did you not?

Mr. GLAVIS. Yes, sir; that was for Special Agent S. N. Stone and Andrew Kennedy, who were going to leave on the 16th.

Mr. VERTREES. On July 7, 1909, did not Mr. Schwartz reply to you?

You are authorized to spend not to exceed \$300 in the purchases of the surveying and other supplies mentioned in your telegram of July 6. Geological Survey can furnish suitable instruments.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now look on page 525 of Senate Document No. 10. Mr. Glavis. There is a telegram there, dated July 6, 1909, from the Commissioner of the General Land Office, in which you advised that testimony can be taken according to the previous notations and instructions that were given, but which telegram concludes:

Government's case would be much strengthened by awaiting result of investigation in Alaska.

You sent that, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now look at page 18 of this volume, Senate Document No. 248. In that letter of July 8, 1909, did you not write to the Commissioner of the General Land Office as follows:

The necessity for such field examinations, showing that the claims have been worked with a view to the consolidation thereof and of the mining and marketing of the coal for the benefit of the claimants with the intention to form a company, is perfectly apparent to you, since your office verbally instructed me in the past that such evidence would be very material and would strengthen the Government's cases.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So they had given you that instruction that that would be material and would greatly strengthen the Government's case, had they not?

Mr. GLAVIS. Yes, sir; that is the conversation I have just referred to with Mr. Schwartz when he examined the Cunningham journal.

Mr. VERTREES. Now look at page 525 of that document, Senate Document No. 248, and you will see that there is a telegram purporting to come from Mr. Schwartz, dated July 17, 1909, and addressed to you at Seattle, in which he states, among other things, as follows:

Have this day wired Sheridan as follows: "Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agents or assistance necessary to bring case to prompt hearing and close."

Now, resuming, he says:

You will render Sheridan every assistance. Meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation can not proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearings.

Did not Mr. Schwartz send you that, and did you not receive that telegram?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Look at Senate document, page 530, and see if Mr. Sheridan was not notified July 21 to the same effect. It is in the latter part of the communication to Mr. Schwartz; it is rather a long communication, giving Mr. Sheridan his instructions. At the end of that letter of instructions this appears:

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I read this for the purpose of asking you if you were not specially informed, according to these telegrams, and if Mr. Sheridan, who was then there, was not also informed that the result of these field examinations of the Cunningham land claims in Alaska would certainly be put in the record before the hearing?

Mr. GLAVIS. Before the hearing?

Mr. VERTREES. Yes, sir; before the conclusion of the case.

Mr. GLAVIS. Yes, sir; that was the very point on which I could not agree with the office. I felt that they should be put in first, and not put in afterwards, for the reason that I felt that if we could make out a prima facie case by the field examination and a record evidence, without using at all the affidavits of the claimants themselves, we

would be in a much better position and a much stronger position because then we could use the affidavits that I had secured in cross-examination of the claimants themselves, who would have to have gone on the stand in their own defense.

Mr. VERTREES. What do you mean by record evidence?

Mr. GLAVIS. It would be hard to list them all, but it was Cunningham journal and the report of Hawkins, and then there were quite a number of circular letters and statements.

Mr. VERTREES. What do you call the affidavits that you call them record evidence?

Mr. GLAVIS. Yes, sir; that is record evidence, but that is the kind which I did not want to put in the case.

Mr. VERTREES. I am not asking what you wanted, but what things are.

Mr. GLAVIS. Yes, sir; the affidavit is the record evidence.

Mr. GRAHAM. Just one moment. The answer stopped at a point which, from what the witness has said, clearly makes him say what he does not mean to say. Mr. Glavis, if you have any explanation to make in connection with your answer, we would like to hear it.

Mr. GLAVIS. The affidavits would be considered record evidence, but it was my intention to withhold those affidavits and not file them in presenting and making our case against the claimants in order that we could use them in cross-examination of the claimants, who would have had to have gone on the stand to have made any defense at all if we could make a *prima facie* case from the—

The CHAIRMAN. Do you not know, Mr. Glavis, that those ex parte affidavits that you and the others had been taking would not be admissible in the final hearing before the commissioner?

Mr. GLAVIS. No, sir; I think they could have been used to impeach any statements to the contrary that they might have made at the hearing. It would have tended to have discredited their testimony.

The CHAIRMAN. You mean on cross-examination to impeach the witnesses. That is all, is it?

Mr. GLAVIS. Yes, sir. It would tend to discredit any statements the claimants might make to the contrary; and if they made the statements that they made in the affidavits, then the statements would cancel the claim.

Mr. JAMES. If those affidavits were not evidence for any purpose, then you would not have been ready for trial at all, would you not?

Mr. GLAVIS. No, sir.

Mr. MADISON. They were not admissible as original evidence? You do not claim that, do you—ex parte affidavits?

Mr. GLAVIS. In the trial that they had, yes, sir; in Seattle. Mr. Sheridan introduced them in evidence before he closed his case.

Mr. MADISON. As original testimony?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, I will recur to the question I asked Mr. Glavis.

Mr. MADISON. Let me ask about Mr. Sheridan. Do you want the committee to understand we ought to take him as a criterion of authority as to matters of that kind?

Mr. GLAVIS. No, sir; I am merely stating what they did; that was all.

MR. MADISON. But you regarded that, as a matter of fact, as a ridiculous proposition?

MR. GLAVIS. I am not an attorney, but the experience I have had, the little experience I have had in it, I did not think it was proper.

MR. MADISON. That is what I was asking you, as to whether or not you wanted the committee to understand what Sheridan did. We have understood your comment in regard to Sheridan indicated that you did not think he was much of a lawyer.

MR. JAMES. Your position was, in proceeding with these cases, that you could not introduce this as original testimony, and, therefore, you wanted to make out a prima facie case from the records and field examinations and force unfriendly witnesses on the stand, so that you might cross-examine them as to their affidavits?

MR. GLAVIS. Yes. To make a case at all with the evidence we had, we would have had to call the claimants. In my opinion, anyway, we would have had to call the claimants as our witnesses.

MR. GRAHAM. In chief?

MR. GLAVIS. You misunderstand; that is, make hostile witnesses for the Government.

Senator SUTHERLAND. Let me understand you. Did you expect that the field examination would make out a prima facie case of a combination between the claimants?

MR. GLAVIS. Coupled with the other record evidence tending to prove that, I thought it would.

Senator SUTHERLAND. You thought it would make out a prima facie case of that character and then put them on their proof to the contrary?

MR. GLAVIS. Yes, sir.

MR. GRAHAM. And then use the affidavits against them in cross-examination if they departed from the statement in the affidavit?

MR. GLAVIS. Yes, sir; that was my idea of handling it.

MR. VERTREES. Now, to go back to my question, Mr. Glavis, what do you mean by record evidence? You speak of record evidence in these reports.

MR. GLAVIS. In which report?

MR. VERTREES. Oh, various reports. When you speak of record evidence what do you mean by it?

MR. GLAVIS. I would mean—it depends in what sense I use it in—of course record evidence ordinarily is the affidavit and anything else that is a matter of record.

MR. VERTREES. That is what I want to get at, what you understood by record evidence. When you were reporting, did not you mean any documents you had, any papers you had, and any affidavits you had on these people that you had taken?

MR. GLAVIS. That I had put in—when I mention that in the Cunningham case.

MR. VERTREES. Yes; in any.

MR. GLAVIS. No, sir.

MR. VERTREES. What did you take the affidavits for?

MR. GLAVIS. To use as evidence, but not to use in the cases in chief unless it was necessary.

MR. VERTREES. Who were you going to examine in chief? Now, when the claimants have gone so far as to enter the land, pay the money, get their certificates, the burden of proof was on the Government then, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The Government had to make out its case first.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. How were you all proposing to do that?

Mr. GLAVIS. Just as I outline here—put in the Cunningham journal. It is contained on the first page in a memo of agreement, and each succeeding page shows that they were carrying out their understanding as stated in the first page of that journal. Then there was a report of an expert named Hawkins, who went up there at the request of Cunningham, or the Cunningham claimants, and made a report as to how they could best mine the coal as a whole, and then there was a request of a railroad for hauling the coal. Then there were some circular letters that went further to show that, but I do not recall them. There were statements and circular letters like any other company would send to people interested. If that field examination showed that they had actually, on the ground, carried out that idea, then that that would be a prima facie case, that there was a combination of persons trying to secure more coal lands than was allowed under the law.

Mr. VERTREES. Just leave out of view the Cunningham group and want to get at the procedure on the part of the special agent. Just leave out the group where there had been a tunnel, and on cases under these numerous affidavits that you were around taking—that would be the procedure in respect to the affidavits with regard to that class of cases?

Mr. GLAVIS. Well, the facts in each case—of course, we were governed by the facts in each group—there was another group, the Makey group and a McAlpine and the Bushnell group. That was an incorporated coal company called "The Michigan-Alaska Development Company." Ordinarily we would not have to depend on the case on the affidavits.

Mr. VERTREES. That is not my question at all, Mr. Glavis. I am asking as to the general rule in that class of cases of the use you make of affidavits. How were they expected to be used in that class of cases, and why were they taken?

Mr. GLAVIS. The affidavits of the claimants themselves?

Mr. VERTREES. Yes; the claimants themselves.

Mr. GLAVIS. We nearly always use those to cross-examine the claimant when he goes on the stand. Last year I had a trespass case where the defendant had been placed on the stand where I had secured their affidavits before they were indicted. Mr. Rasch had used the affidavits to cross-examine the witnesses.

Mr. VERTREES. Oh, of course—

Mr. GLAVIS. That was our object in taking affidavits.

Mr. VERTREES. Just merely for purposes of cross-examination?

Mr. GLAVIS. Yes, sir; to get at the facts, of course, as to the situation.

Mr. VERTREES. Isn't this the way you handle these cases and why you took those affidavits? You took these affidavits and used them as confessions against the parties, and when the question was brought up for determination before the register and receiver of your agents would appear with these statements and say this man admitted thus and so to me, and take the stand, swear and produce these papers?

Mr. GLAVIS. Yes, sir; after the man had gone on the stand and denied it, if he did.

Mr. VERTREES. But the man in the case I have put, who has completed his entry—it was not necessary for him to do that. The burden of proof was on the Government, was it not?

Mr. GLAVIS. It was; but if it had been necessary for them to go on the stand to make any defense at all, if we could make a prima facie case without using any affidavit, it would have strengthened the Government's case a good deal more to use those affidavits to tend to impeach and discredit his testimony, or their testimony, when they went on in defense, than it would to produce them at first.

Mr. VERTREES. Well, isn't this true, Mr. Glavis, and wasn't it the practice of your people that the agent who took these statements would be put on the stand in the first case to make a prima facie case, and that was the regular course of procedure, that he would take the stand and testify that he had seen such and such a claimant and that the claimant had told him thus and so, either verbally or in writing; is not that the way you handled it and what you took those affidavits for?

Mr. GLAVIS. No, sir; we did not usually do that. We might have done that in some cases. I don't think in my division that they often did. We did that probably in a few cases; when we had no other evidence and were hard pressed to make a prima facie case we have done it, but when we could make a prima facie case without it it would not be good policy to do it.

Mr. VERTREES. Well, is not this true, Mr. Glavis, that very fact, that was in the nature of a confession or admission in the affidavit, could be proven as such by the special agent that took it, without resorting to the affidavit—put him on the stand and say that he admitted thus and so to me at such and such a time?

Mr. GLAVIS. Well, that would be probably so; I don't know.

Mr. VERTREES. Didn't you all do it that way? Wasn't that the regular way?

Mr. GLAVIS. We did it when it was necessary, but when we had a strong case that did not require that, we never did it.

Mr. VERTREES. It comes to this: If you could prove the case without the agent taking the stand, he didn't, but if you could not, then the agent, the one who got these affidavits, took the stand and said that the man had admitted thus and so to him. Did not you get the affidavits for that purpose? Was not that the way you did it?

Mr. GLAVIS. Which affidavit?

Mr. VERTREES. The affidavits of the claimants.

Mr. GLAVIS. Of which claimants?

Mr. VERTREES. The claimants in general, Mr. Glavis.

Mr. GLAVIS. No. It depended entirely upon the other evidence we got as to how we would determine to use the affidavits of the claimants.

Mr. VERTREES. Well, I did understand you to say this, that the difference right there that arose was one of procedure; that you thought so far as you were concerned you ought to hear from Alaska the result of those field examinations before you took the depositions of witnesses.

Mr. GLAVIS. In the Cunningham case?

Mr. VERTREES. In the Cunningham case.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The office here thought that that was not necessary.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That was their idea about it?

Mr. GLAVIS. Yes, sir; and there is another reason in this part of the Cunningham case, too; and that is the fact that that affidavit prepared by Judge Ballinger for Clarence Cunningham was prepared and was submitted with a view of discrediting the affidavit we had in the Cunningham case.

Mr. VERTREES. You are now lugging in the reason why you gave the opinion you did. What I want to know is, not what your reasons were but if this was not the situation, that the difference was that you thought that the depositions of the witnesses should be taken until after you had heard from Alaska, until after the experts had reported on the situation there, and the land was thought differently and thought you ought to proceed with the taking of depositions in the United States?

Mr. GLAVIS. Yes, sir; and that affidavit that I referred to in my answer above was one of the reasons which made me have that opinion.

Mr. VERTREES. Now I am not asking you for your opinion or your reasons—

Mr. GLAVIS. I want to explain.

Mr. VERTREES. Have I said you are wrong or you are right? You will just answer my question we will get along.

The CHAIRMAN. I think you ought to try to answer the question.

Mr. GRAHAM. I submit, Mr. Chairman, there is a little too much lecturing and fault-finding with the witness.

The CHAIRMAN. I am not aware of that fact.

Mr. GRAHAM. It strikes me differently.

The CHAIRMAN. I am sorry to differ with you.

Mr. VERTREES. I would like to say in that connection—of course it is far beyond my province to lecture a witness who is before the committee, and I will not attempt to do that. But I submit, with all respect to him, that I am entitled to answers to my questions and it is not fair to me for the witness when he makes an answer to lug in an argument every time to destroy the effect of what he may think I am driving at.

Mr. GRAHAM. In order to reach that situation, Mr. Chairman, I suggest that an appeal be made to the chair rather than a controversy between Mr. Vertrees and the witness.

The CHAIRMAN. Proceed, Mr. Vertrees.

Mr. VERTREES. Mr. Glavis, you will permit me to request that when I ask you a question, to please answer that question and not anything unless it is necessary to explain the answer which is given. I will be greatly obliged if you will do that for me.

Now, to go back to it. What I wish to know is this: Whether or not this was the situation at the time we had been speaking of up to now, whether there was a difference of opinion between you and Mr. Schwartz, your chief—that you were of the opinion that the taking of the evidence, of the hearings, as you all call them, should not proceed until after you had received the report from the Alaska field investigations; and, upon the other

if Mr. Schwartz, acting assistant commissioner, was not of the opinion that you ought to go ahead and examine the witnesses in the United States, without waiting for the report from those experts who had gone to Alaska? Wasn't that the difference between you then?

Mr. GLAVIS. Yes, sir. Now, the witnesses they had, I would like to be understood, were only the claimants themselves, except as to the identification by Mr. Jones and myself of the documentary evidence we had secured.

Mr. VERTREES. Well, by identification you mean for you and Mr. Jones to swear to the affidavit you had taken?

Mr. GLAVIS. No. That was undoubtedly Mr. Schwartz's view of the case that we should call the claimants——

Mr. VERTREES. Now, Mr. Glavis——

Mr. BRANDEIS. Allow him to finish?

Mr. GLAVIS. And I did not think it ought to be done that way.

Mr. VERTREES. Now, you have spoken of Mr. Schwartz's view. I will ask you if Mr. Schwartz did not state his view to the gentleman then associated with you; that is to say, Mr. Sheridan, in a letter dated July 21, 1909?

The CHAIRMAN. Where is that; on what page?

Mr. VERTREES. Senate document, page 530, is the part I would refer to. In that part of the letter which says:

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the beginning of the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that, whatever the result of these examinations, there will be opportunity given to get such results in the record of the hearings.

In other words, was not Mr. Schwartz's, as acting assistant commissioner, position this: That so far as the examination of these claimants was concerned, the question was as to their good faith and bona fides when they undertook to make these entries; and that he thought you ought to proceed with examination of these witnesses, without waiting for the report of the result of the physical examination?

Mr. GLAVIS. Yes, sir; and that was just the point I differed with him on. I did not think that we ought to use the claimants, who were hostile witnesses, as government witnesses, if we could do it without.

Mr. VERTREES. You had statements there from every one of them, did you not; that you or some other agent had taken?

Mr. GLAVIS. Yes, sir; but all of them were not favorable, as I recall them.

Mr. VERTREES. I am not asking you about that, whether they were favorable or unfavorable, but just whether you had them.

Mr. GLAVIS. I don't know whether we have one from every one, but I am inclined to think we did.

Mr. VERTREES. And hadn't Mr. Schwartz advised you exactly what he here advises Mr. Sheridan; that is, that whatever the result of the examinations—the field examinations in Alaska—should be, that there would be an opportunity given to get such results in the record of the hearings?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Told you both that? So the whole question, then, was not so much as to whether you should proceed, but as to the way in which you should proceed? You yourself suggested "I think

it advisable not to take the depositions of witnesses in the United States or to proceed with these hearings until after the evidence has been reported on the Alaska lands;" but Mr. Schwartz, the witness, thought differently—is that it?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. A little louder, please.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. It was not a question of Mr. Schwartz trying to rush the thing through, and not put in the Alaska evidence, was it?

Mr. GLAVIS. No.

Mr. VERTREES. Is it not a fact he had assured you all the time that that was important, and that it should go into the case?

Mr. GLAVIS. Yes, sir; but the manner in which it was going to be put in this particular case was likely to endanger or lose the whole case, I felt.

Mr. VERTREES. That was your judgment?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But Mr. Schwartz thought differently about it, didn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The point I want is not as to the value of the evidence, in your judgment, but to the fact that while Mr. Schwartz was insisting that it should be that way, he all the time stated that the report on the Alaska investigation should go into the case. Was it a part of the evidence when it came to a decision, did he not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, that was the situation and these were the orders you wrote to Mr. Schwartz, or rather telegraphed, that there were new phases of the question—look at page 519, Senate document—that is to say, did you not on June 30, 1907—another telegram is on page 519 of Senate document—telephone to the commissioner of the General Land Office—

Mr. BRANDEIS. Telegraph, you mean.

Mr. VERTREES. Yes, telegraph, as follows:

New phases developed as investigation progresses. Can not consistently make final report while further evidence—

I suppose that word means evidence (refer to word eviogh) [continuing quotation]—

is available. Cunningham group included. Time should be extended at least ten days longer.

You sent that telegram, did you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you not also, at the top of the page, 519, did you not telegraph the commissioner as follows:

Valuable evidence Alaska coal cases still being secured. New phases developed as investigation progresses. Can not consistently make—

Strike that out, that is the same thing; it seems to be a duplicate of two reports of the same kind.

The CHAIRMAN. I think one telegram is a translation of the other.

Mr. VERTREES. Yes, sir. I have it marked on 511, but it does not seem to be there.

There is a telegram, Mr. Glavis—where is it?—in which you say you could not close the group while further proof is available.

Mr. GLAVIS. I think that is about June 30. Probably they run in better order in that list, Mr. Vertrees; they run in order of the dates. Here it is.

Mr. VERTREES. What page is it on?

Mr. GLAVIS. That would be page 519 of the record or 227 of this list, you will find it.

Mr. VERTREES. The report I refer to, which is in the list of orders, letters, and telegrams, is that telegram from you to the commissioner, which is as follows: "Valuable evidence Alaska coal cases." That is the same one, Mr. Glavis.

Mr. GLAVIS. No. A little bit farther on you will find it is not it.

Mr. VERTREES. Well, we can not find it. What I want to ask you is: Now, you say in this telegram that "new phases developed as the investigation progresses," and that you "can not consistently make final report while further evidence is available." That is June 30. Now, I will ask you what that new testimony or new evidence is that is available, and what those new phases were that you there speak of, which caused you to say that the time could be extended at least sixty days longer?

Mr. GLAVIS. We hadn't completed getting the affidavits yet, and we kept on and got a lot of good additional evidence right along after that.

Mr. VERTREES. What were the new phases that were developed?

Mr. GLAVIS. Oh, I remember now taking the affidavit of a man named Hossman that referred to the Mackey, McAlpine, and the Bushnell group.

Mr. VERTREES. I am asking you about the Cunningham group.

Mr. GLAVIS. Yes, sir. This telegram refers to all the coal claims.

Mr. VERTREES. It says "the Cunningham group included."

Mr. GLAVIS. Yes; included.

Mr. VERTREES. But the orders were to report with respect to the Cunningham group.

Mr. GLAVIS. My orders, dated April 20, 1909, stated: Investigations of all the Alaska coal cases must be completed within sixty days, and this telegram was in reference to that.

Mr. VERTREES. Look at page 516 and see if there is not a telegram—page 225 of this list; 516 of Senate document—a telegram from Mr. Schwartz to you, in reply to one which you sent to him, in which you stated to him, "Is it necessary"—that is June 29—"is it necessary to submit report on Cunningham group?" Didn't you send that telegram?

Mr. GLAVIS. Yes, sir; that was in reply to Mr. Schwartz's telegram of June 29, on page 224.

Mr. VERTREES. Reply or not—didn't you ask him whether it is necessary to submit report on Cunningham group?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And didn't he reply to that inquiry of yours, telling you in a telegram of June 30, 1909?

"Yes; submit Cunningham report. Notice of charges will be prepared here. You may suggest form in your report if you desire."

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. What is that? Speak a little louder.

Mr. VERTREES. Now, then, after the reception of that didn't you then telegraph him that the new phases developed as investigation pro-

gresses, that you could not consistently make final report further evidence is available, and that the Cunningham group included?

Mr. GLAVIS. Yes, sir; the reason I included the Cunningham group in the statement that I could not consistently make reports was because I didn't think the investigation of the Cunningham group was closed until the field examination was made, would permit me then to state that I had done all I could in securing all the evidence I could in that investigation.

Mr. VERTREES. So, if I understand you, then, when you said that you had reference to the field investigation as the "new phases?"

Mr. GLAVIS. So far as the Cunningham group was concerned.

Mr. VERTREES. So far as the Cunningham group was concerned.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what "new phases" had been developed by a field examination that had not been made yet?

Mr. GLAVIS. Read the question.

(The stenographer read the question, as follows:)

Now, what "new phases" had been developed by a field examination that had not been made yet?

Mr. GLAVIS. None; but the new phases developed did not refer to the field investigation; it referred to the evidence I was securing in the other Alaska coal cases.

Mr. VERTREES. Didn't you say this, that it referred to the investigation, so far as the Cunningham group is concerned?

Mr. GLAVIS. Yes; so far as the Cunningham group is concerned.

Mr. VERTREES. That is what we are talking about.

Mr. GLAVIS. Yes; but the telegram is talking about all the Alaska coal cases. I want to make it as plain as I can that it does.

Mr. VERTREES. Well; it refers to them all, but didn't you specifically say that the Cunningham group is included in the statement you have made?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then, didn't you further say, in response to that, so far as the Cunningham group was concerned this field examination evidence that was available was the evidence that was being secured by field examinations, and that you did not feel you could make your report properly and fairly, with justice to those people and to yourself, until you got that—is not that what you stated?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I am asking you what new phases that field examination had developed?

Mr. GLAVIS. None; because the field examination had not been made.

Mr. VERTREES. Had not been made at all. What further evidence was there available?

Mr. GLAVIS. In what cases?

Mr. VERTREES. In the Cunningham cases.

Mr. GLAVIS. The evidence available in the Cunningham cases.

Mr. VERTREES. By the field examination?

Mr. GLAVIS. The field examination. And there were three or four people we wanted to see, and also it was thought that Andrew

nedy and special agent, S. N. Longer, might get some additional evidence from the people on the ground in reference to the Cunningham case—that is, from the people around Katalla or the people who had worked for the Cunninghams or on the Cunningham claims.

Mr. VERTREES. Had you not been told or heard it more than once that that evidence, whatever it might be, that these men would get up there, would be available and would be considered and would be made a part of the record before the case was considered?

Mr. GLAVIS. Yes, sir; before the case was closed.

Mr. VERTREES. What I wish to know, in view of that answer, is, does your telegram there, without any reference whatsoever as to the form in which the evidence shall come in—that is to say, the propriety of postponing one examination until you could get another—doesn't it expressly tell him that there are new phases arising, meaning thereby evidence that has not been discovered at all, that you could not consistently report while further evidence is available?

Mr. GLAVIS. On all the Alaska coal cases; that I could not make final report while further evidence is available.

Mr. VERTREES. The "Cunningham group included?"

Mr. GLAVIS. The Cunningham group included, because I couldn't consistently make final reports on that group while further evidence was available.

Mr. VERTREES. And that further evidence being the field examinations?

Mr. GLAVIS. And seeing these few people and, if possible, getting some evidence from the people on the ground.

Mr. VERTREES. Had you not then received specific instructions to report on the Cunningham group?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The day before?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And didn't Mr. Schwartz say to you in the telegram of July 1, 1909, which would be the next day, and which is found on page 519 of Senate document, that—

reports must be submitted at once as per instructions and agreement. You may, of course, continue investigations. Reports are wanted now. Will send man to Seattle to take charge of investigations and conduct cases in near future. Meantime continue your investigation.

Mr. GLAVIS. Yes, sir. I consider that telegram to be an answer to my telegram right above it of June 30, 1909, and which would mean all of the Alaska coal cases.

Mr. VERTREES. Now, on July 17, I call your attention to a telegram that appears at page 525, Senate document, in which Mr. Schwartz told you this:

Your wire 16th in reference your consultation with Secretary received. Instructions heretofore issued modified in view of your telegram 6th. Your report of 8th not at hand. Have this day wired Sheridan as follows: "Your instructions Cunningham case modified. You will proceed to Seattle, taking complete charge of case, with authority to call for any agents or assistance necessary to bring case to prompt hearing and close." You will render Sheridan every assistance. Meantime continue investigations. Case already consumed more time and expense of men than any other case pending. Investigation can not proceed indefinitely. Results of pending investigation in Alaska will go into record before concluding hearings.

Mr. GLAVIS. Yes, sir. I would like to state here that the telegram which I sent on the 16th was sent at the request of Mr. Ballinger.

Senator PURCELL. On the 16th?

Mr. GLAVIS. On the 16th. It appears on page 20 of the document.

Mr. JAMES. On what page of this chronological arrangement of letters—; what is the date of that telegram you say you sent?

Mr. GLAVIS. That I sent?

Mr. JAMES. Yes.

Mr. GLAVIS. July 16, 1909.

The CHAIRMAN. On page 20 of Senate document, is it not?

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. It appears on 224 of the chronological compilation.

Mr. VERTREES. I find a telegram of July 16, and I presume that is the one, on page 524 of the Senate document.

Senator PURCELL. It is the same thing; they are both the same thing.

Mr. VERTREES. Read that telegram, Mr. Glavis, of July 16.

Mr. GLAVIS (reading):

Matter mentioned in your wire 16th. Have conferred with Secretary Interior and suggests I wire you and ask if my report July 8 and telegram July 6 was correct before you sent telegram this date. In view of recommendations stated in report referred to, it will be difficult to comply with your telegram unless you desire to proceed without further investigation.

Now, then, my report of July 8 will explain that. That is on page 233 of the compilation.

Mr. VERTREES. Now, in this report of Mr. Sheridan of July 8, which is found on page 532 of the Senate document, does not Mr. Sheridan, who was out there with you at the time, on page 532, Mr. Schwartz, chief of the field service, this:

There is no additional record evidence to be obtained at present, as far as we are concerned, and hence it would be unnecessary to keep Special Agents Smith and Phillips for that purpose.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is July 27?

Mr. GLAVIS. Yes, sir. But I recall distinctly having told Mr. Sheridan of my wanting to see one or two people that were in the field and also locate Hawkins, who I afterwards found was up in the field and Special Agent Kennedy, acting on my instructions to secure additional record evidence, which would be affidavits, did see Mr. Hawkins.

Mr. VERTREES. That means evidence with reference to this case of Cunningham.

Mr. GLAVIS. That is the one I meant, too.

Mr. VERTREES. Does not this letter of Mr. Sheridan's state the last clause?—

I desire to state that in reaching my conclusions on this matter and in making my recommendations I have been influenced solely by the facts in the case as they appear from the record evidence available and from my own best judgment of the matter. Mr. Glavis has in no way attempted to influence me on this matter, and I have kept up my mind as to what I thought best to do in the premises before I conferred with him on this case in detail; hence I wish to assume entire responsibility for the recommendations which I make in this communication.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, he says you did not influence it; you were not of it, and you knew he sent that report, did you not?

Mr. GLAVIS. Knew he sent it; yes, sir. I will tell you what I added this last paragraph.

Mr. VERTREES. Wait a moment—

Mr. GLAVIS. I want to explain this last paragraph. He had first dictated the letter and then I showed him the letter of about July 17, I think it is, from Mr. Schwartz; yes, and July 21, 1909, this letter from Mr. Schwartz to Mr. Sheridan—

Mr. VERTREES. Where is it?

Mr. GLAVIS. It is on page 287.

Mr. BRANDEIS. Page 251 of the compilation.

Mr. GLAVIS. Page 251 of the compilation. Mr. Schwartz sent me a copy of this letter to Mr. Sheridan, and Mr. Sheridan had not received the original of it, which was sent to Denver; and I received a copy of the letter that he sent me on July 26, as I recall it, or the 27th, the morning that Mr. Sheridan wrote that report; and one reading the letter can clearly see that it might influence Mr. Sheridan's judgment in concurring in Mr. Schwartz's views instead of in mine. I gave him a copy of this letter that I had received and Mr. Sheridan stated—I told Mr. Sheridan: "I want to let you see Mr. Schwartz's view because I don't want it said that I am influencing you in any way about it, and I have purposely refrained from going into details on that account, because I feel you have been sent here to pass upon my recommendation and actions." And he said that he wanted Mr. Schwartz to understand that that was his view without being influenced by me, and added this last paragraph.

Mr. VERTREES. Did he show the report of July 21 to you before he sent it?

Mr. GLAVIS. Yes, sir; he sent it to me.

Mr. VERTREES. You saw it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You saw there, then, the statement:

There is no additional record evidence to be obtained at present so far as we know, hence it would not be necessary to keep Special Agents Smith and Phillips here for that purpose.

Mr. GLAVIS. Yes, sir; but I paid no particular attention to it because in that other paragraph he stated I had spoken to him in that way, and I didn't read with that end in view. I was reading the report and recommendations that he made, but I did not read it that minutely to find that he had made that technical mistake, because, as a matter of fact, he did know it, that there was additional evidence I wanted to get. I will tell you how he knew it; there is a letter just occurred to me. He saw a copy of my instructions to Special Agent Andrew Kennedy—I don't think that it is of record here at all, but I am not very sure. In that letter of instructions to Mr. Kennedy and Mr. Stoner I told them to also secure, if possible, affidavits from people up there who knew about anything that would be of assistance in the investigation of this Cunningham case.

Mr. VERTREES. That would be just a general letter to find out anything that they could, wouldn't it? Did you give them the names of any witnesses up there in that letter to take?

Mr. GLAVIS. I have not seen that letter since I wrote it, but I recall having suggested the possibility that there would be additional record evidence. I think I did now, I am not sure.

Mr. BRANDEIS. We would like to call, Mr. Chairman, for copies of the originals of those letters to Andrew Kennedy and Stoner which seem to be in the possession of the Interior Department.

The CHAIRMAN. Have you called for them?

Mr. BRANDEIS. No, sir; I say we do now.

Mr. VERTREES. I am informed we have them. They were this morning.

The CHAIRMAN. You will find them in the record here, I think.

Mr. GLAVIS. I don't think—have I finished that answer?

(The stenographer read the answer, as follows:)

I have not seen that letter since I wrote it, but I recall having suggested the possibility that there would be additional record evidence. I think I did now, sure.

Mr. GLAVIS. I think I did mention in there to get the affidavit if possible, of men that would be on the claims, those who. Whether I gave any names—I don't think I did, because I would know the names of the people.

Mr. VERTREES. That is what I want to get at. You now say your recollection is you didn't mention any names at all.

Mr. GLAVIS. I don't think I did, unless it was Hawkins, an expert, and I don't know whether I knew at that time that he was in Alaska. I don't think I did; it was after that.

Mr. VERTREES. Then, all that means is it is your recollection you mentioned no names?

Mr. GLAVIS. In that letter?

Mr. VERTREES. In that letter.

Mr. GLAVIS. Yes, sir; that would be my recollection, because I have not thought of that letter since I wrote it.

Mr. VERTREES. Then it must have been a general letter for the purpose just to take any evidence that he could find up there?

Mr. GLAVIS. I think the letter would speak for itself.

Mr. VERTREES. They generally do; but I am asking you about your recollections about it. I want to get on the point where you just gave a general letter of instructions to this man to take any evidence that he found up there or whether you instructed him to take evidence of particular persons named. I have understood you to say you don't recollect that you named any persons.

Mr. GLAVIS. No; I don't recollect naming any persons, but I think I suggested the character of evidence that might be obtained from persons that were not known to me, but I am not sure.

Mr. VERTREES. You did not know of any evidence up there, did you?

Mr. GLAVIS. Positively that such evidence existed?

Mr. VERTREES. Yes; that is what I mean when I say know.

Mr. GLAVIS. No. I was not positive what he would get, but I thought it might be possible to get some.

Mr. VERTREES. That is just what I am getting at. You thought that there might be some, but you did not know of any—is not that the truth of the matter?

Mr. GLAVIS. We never know whether we can get evidence until we interview the people.

Mr. VERTREES. I am not asking you about what you generally get. I am asking you about this particular occasion.

Mr. GLAVIS. It was the same in this case as in other cases.

Mr. VERTREES. Then it was the same in this case. If there was any there you did not know it—is not that true?

Mr. GLAVIS. No, sir. I thought it would be possible to get evidence, but I was not sure whether they could get it.

Mr. VERTREES. Now, Mr. Glavis, I have not asked you what you thought was possible, but I ask you whether you knew of anything up there.

Mr. GLAVIS. No, sir; I was not absolutely certain of it.

Mr. VERTREES. Well, now, that answers my question. When you say you were not certain, had you information that there were any particular person there who could testify?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Who was that?

Mr. GLAVIS. There were people who had worked on the coal claims, worked on that big tunnel with the Cunninghams, and there was a watchman up there, or supposed to be, and——

Mr. VERTREES. You mean this, do you not? You understood there were persons that worked up there, those persons if they were there at work ought to know and your agents ought to investigate them and examine them and see?

Mr. GLAVIS. Yes, sir; ought to see them.

Mr. VERTREES. That is what you mean. Then is not this statement of Mr. Sheridan's absolutely correct that "There is no additional record evidence to be obtained at present, so far as we know?"

Mr. GLAVIS. Using it in that sense, yes, sir; that would be right. I would not have any objection to it at all if you use it in that sense; but we are not sure of any evidence until we secure it.

Mr. VERTREES. That is the sense you use it in then?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Therefore that is a correct statement if it should be read that way?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Otherwise it is an incorrect statement?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, correct or incorrect, you saw it before it was sent out and made no attempt to correct it.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Either with the department or Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I understand that letter. Go to page 201 of that evidence, Mr. Glavis. You say that you protested against having hearings in the Cunningham cases, about the middle of page 201, on July 16, 1909, to the Forest Service.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what I want to know is when did you get your first information that you would be supplanted by somebody else?

Mr. GLAVIS. That was July 17, as I recall it; I know it was; that I would be definitely supplanted was July 17. The other telegram read that he would come out to assist me, and then there was another telegram, I think, that said somebody else would be sent out to take charge in the near future, and then there was still another telegram rather changing that, indicating that I was to have charge, and that was the condition when I sent the telegram of June 16.

Mr. VERTREES. What I want to get at is not as to who the person definitely was who would take your place, but when did you get the first information that somebody was going to supplant you and take your place.

Mr. GLAVIS. In my answer above I did not say who definitely it was. My answer would be the same as above. I can repeat it. It was about July. They are all in this book.

Mr. VERTREES. That is not the question, where they are. I asked you the date; if you do not know you can look at the telegrams.

Mr. GLAVIS. I recall it was along in July I got a telegram saying—

Mr. VERTREES. July is a period of thirty days.

Mr. BRANDEIS. Thirty-one days.

Mr. VERTREES. Thirty-one, your counsel says. July is a period of thirty-one days, and on the 16th of that month, which is a half a day over the half of the thirty-one, you say you protested to the Forestry Bureau.

Mr. GLAVIS. Now, I think the records are right in there, but I think it was July 1, 1909, that they first said that. The telegram said that they would send somebody out in the near future to handle the cases.

Mr. VERTREES. That is what I want.

Mr. GLAVIS. Then along in July—let me see—

Senator SUTHERLAND. The witness has answered the question.

Mr. GLAVIS. There were three telegrams.

Mr. VERTREES. What I want to know is your first information, when did you get it, that somebody was going to supplant you?

Mr. BRANDEIS. That was not the question that he put before.

Senator ROOT. That is the question now. Let him answer that.

Mr. GLAVIS. That is the first time, as I recall it.

The CHAIRMAN. That answers it.

Senator ROOT. When was the first time?

Mr. GLAVIS. July 1, 1909.

Senator ROOT. That is the question now.

Mr. GRAHAM. I think he has the right to either abandon the question or follow it with another.

Mr. VERTREES. I think it is the same question.

Senator ROOT. I suggest that we go on with the examination.

Mr. BRANDEIS. I would like, Mr. Chairman, to have that question and the answer read.

Senator ROOT. I object.

The CHAIRMAN. Objection is made. Go on, Mr. Vertrees.

Mr. JAMES. Mr. Chairman, the attorney representing Mr. Glavis is not informed as to what the question was, and I think he is entitled to the courtesy of having it read.

The CHAIRMAN. The question was repeated three times.

Mr. JAMES. I ask that my motion be considered that it be read.

Mr. GRAHAM. I second that motion.

(The question was thereupon put and those objecting to the motion being in the majority, the objection was sustained.)

The CHAIRMAN. Proceed.

Mr. VERTREES. Look on page 519 of the Senate document, about the middle of the page—there is a telegram there from Mr. Schwartz, assistant commissioner, to you at Seattle, dated July 1, 1909. I will read that to you for the purpose of having you answer whether or not that is the telegram to which you refer [reading]:

Reports must be submitted at once, as per instructions and agreement. You may, of course, continue investigations. Reports are wanted now. Will send man to Seattle to take charge of investigations and conduct cases in near future. Meantime continue investigations.

Mr. GLAVIS. Yes, sir; that was the telegram that refers to sending a man out there to supersede me.

Senator FLETCHER. Now, you could have put that into the record, without this half hour's delay, about depending on a man's recollection of what happened a year ago. It seems to me that when you try to have him recollect what was received a year ago, when the whole thing is in here, is simply consuming unnecessary time, Mr. Vertrees.

Mr. VERTREES. I perhaps did, Mr. Chairman, but I did it with reference to the witness's original evidence. He spoke about the 16th or 17th, there on page 201.

Now what I want to get at, and why I have, perhaps, improperly consumed time, was this, that in July, sometime about the middle, you approached the Forest Service, the Bureau of Forestry, with a view of getting them to intercede to postpone these hearings, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, when did you do that?

Mr. GLAVIS. July 16.

Mr. VERTREES. July 16. Now, at that time, July 16, you knew, did you not, that a man would be there very shortly to take your place?

Mr. GLAVIS. No, sir. On July 6, 1909, a telegram was sent, which will be found on page 519 of the Senate document, which concludes:

You to present Government's case with such legal assistance as you may require. Answer at once.

The CHAIRMAN. What page is that?

Mr. GLAVIS. Page 519 of Senate document.

The CHAIRMAN. At the bottom?

Mr. GLAVIS. Yes, sir. It commences there and it ends on page 520, what I have quoted. I felt by that that the telegram of July 1 had been changed—their instructions had been changed.

Mr. VERTREES. You had received no notice of any change?

Mr. GLAVIS. Yes, sir. I had received the notice contained in the telegram of July 6, 1909.

Mr. VERTREES. That merely stated that—

This office will appoint a commissioner to take testimony, you to present Government's case—

to that commissioner?

Mr. GLAVIS. No. It says "With such legal assistance——"

Mr. VERTREES. With such legal assistance.

Mr. GLAVIS. I thought if they were going to furnish me with assistance that they left me in charge of the case to decide that part and have complete control over it.

Mr. VERTREES. So that you contend that telegram was a modification of the previous one that they would send a man to take charge and conduct the cases in the near future?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But this did not state that they would send him by July 6, did it, or by July 7, or any other date? They merely said in the near future, and this telegram that you have received was for your conduct during those few days until that man would come.

Mr. GLAVIS. I did not so construe it, because it would take more than a few days for me to present the Government's case to the com-

missioner and take the testimony in all the Cunningham cases; it would take several months. And they surely could not have meant by this telegram that it was for only a few days that I was to have charge.

Mr. VERTREES. Did you not understand the telegram of July 1 to mean exactly what it says, that you are to continue your investigations, and that reports were wanted; that they would send a man to take charge in the near future, but in the meantime—that is, until that man does get there to take charge—that you shall continue your investigations?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then on the 6th, which is five days after that, you are given directions to wire the names of the different towns or cities in which you desired the testimony to be taken—that is on page 519 of that document—and that the office would appoint a commissioner to take the testimony—of course, at those towns in the East that you may mention, and that you were to present the Government's case, with such legal assistance as you required, and that you were to answer at once?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And in response to that did you not give a number of places at which evidence should be taken, in your telegram of July 6? But you added to that: "Government's case will be much strengthened by awaiting result of investigations in Alaska."

Mr. GLAVIS. Yes, sir. There is also a further reason that I had to believe—I will withdraw that. On July 16 there was another telegram that led me to believe that they had countermanded that order putting somebody in charge, because Mr. Schwartz advises me there that he had directed Special Agent Sheridan, competent trial attorney, and experienced in coal matters, to report to me until after testimony is complete.

Mr. VERTREES. I will state to you what I want to get at. If this was not the situation, that you were to continue in charge, just like you had been before, but with the knowledge from July 1 that in the near future—no definite time being fixed—a man would be sent out to take your place and take charge?

Mr. GLAVIS. No, sir. I felt that the subsequent advices countermanded that statement contained in the telegram of July 1.

Mr. VERTREES. On July 17, which was sixteen days thereafter, was not Mr. Sheridan ordered to go to Seattle and take complete charge of the case, with authority to call for agents or assistance necessary to bring the case to a prompt hearing?

Mr. GLAVIS. Yes, sir; but it was modified to read for me to take complete charge—the telegram of July 16.

The CHAIRMAN. What page is that?

Mr. VERTREES. Page 525 of Senate document. It is dated July 17.

Mr. GLAVIS. It says that he was to come and assist me.

Mr. VERTREES. The telegram you refer to is the one of the day before, is it not, July 16, to be found on page 524?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. In which Mr. Schwartz, on July 16, just says:

Please wire towns or cities in the order in which you wish to take testimony (Cunningham case). Wish to arrange for bringing on the witnesses in accordance with your desire. Have directed Special Agent Sheridan, competent trial attorney and experienced in coal matters, to report to you until after testimony is complete.

Now, that is merely a statement, is it not, that you were still in charge and that Mr. Sheridan is to report to you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But the telegram of July 1 had told you that in the near future, fixing no date, somebody would take complete charge, had it not?

Mr. GLAVIS. Yes, sir; and then the telegram of July 6, 1909, states that I was to present the Government's case with such legal assistance as I might require; and I thought that changed the telegram of July 1.

Mr. VERTREES. You were in charge out there entirely at that time and had charge when these telegrams all came telling you that you would be displaced, were you not?

Mr. GLAVIS. Yes, sir. I did not have charge of the Cunningham case for about five or six days when Mr. Sheridan was there acting under the instructions of July 17, to take charge.

Mr. VERTREES. So that you had received the telegram of July 1 telling you to look out for a change in the near future, when you would be displaced, when you appealed to the forestry people?

Mr. GLAVIS. Yes, sir; I had received the telegram of July 1, 1909, advising me that the office would send a man out to take charge of the investigation, but I had also received the other telegrams that I have mentioned several times.

Mr. VERTREES. Who approached the Forestry Service or the Bureau of Forestry on the subject of intervention, and how was it done?

Mr. GLAVIS. The district forester at Portland, named E. T. Allen—he lives in Portland now—was up to Seattle about two or three days before this, about the 14th of July, I think, and I saw him one night and talked to him about these coal cases. I did not talk very much; I wanted to see what he knew about them; whether he knew there was any in the Chugach Forest, etc. That was the first step I took, and I thought the fellow would ask the Forestry Service to intercede, as I had explained some of the cases to him, thinking that he would make inquiry about them, but he apparently did not do anything. Then on July 16, 1909, after I had seen Secretary Ballinger and laid the matter before him, and he had not interfered, I just sent this telegram to Mr. A. C. Shaw, at Washington, D. C., and I do not know—

The CHAIRMAN. Is that telegram in the record here?

Mr. GLAVIS. I was just going to add that I did not know whether it is or not. It is a telegram of July 16, 1909, a copy of which is on file in the chief field division office in Seattle, Wash.

Mr. VERTREES. And in view of your statements that Secretary Ballinger interfered, I will ask you to state what you mean by that statement that he interfered.

Mr. GLAVIS. I think you misunderstood, Mr. Vertrees. I said that he did not interfere.

Mr. VERTREES. Did not interfere?

Mr. GLAVIS. No, sir; did not interfere.

Mr. VERTREES. He refused?

Mr. GLAVIS. No; he did not refuse.

Mr. VERTREES. I will ask you if this telegram is not on page 259 of the list of documents in which Mr. Ballinger says to Mr. Dennett:

Considering my personal reluctance to direct proceedings in Alaska cases you should make necessary directions to Schwartz.

Mr. GLAVIS. Two hundred and fifty-nine?

Mr. VERTREES. Two hundred and fifty-nine of this list.

Mr. GLAVIS. He did not refuse in that conversation not to see me at all; he heard me through. I showed him my telegram of July 6, I think it was, and the report of July 8, that I had made in connection to the Cunningham case, and read extracts from that particular place which referred to the necessity of waiting for examination, and outlined to him why it was necessary and the I thought it ought to be done in order to show the joint work of the claim, etc. And then it was at his request, as I stated in my telegram of July 16, 1908, that Mr. Schwartz was wired and asked whether those facts had been considered, because he thought the Cunningham claimants would stipulate to that.

Mr. VERTREES. Did he not advise you to inquire whether they had received your two previous telegrams, I believe of the 6th and 16th?

Mr. GLAVIS. Whether they had considered them?

Mr. VERTREES. When they made the order on you whether they had considered these telegrams? In other words, was not the suggestion in the interest of what you wanted?

Mr. GLAVIS. No, not directly, because he thought they would stipulate to what I wanted.

Mr. VERTREES. That is not the question.

Mr. GLAVIS. And I felt that knowing—

The CHAIRMAN. Mr. Vertrees says that was not the question.

Mr. GLAVIS. I did not finish. I am explaining that.

The CHAIRMAN. Let Mr. Vertrees repeat his question.

Mr. VERTREES. If you will allow me I will change it somewhat. I think he may get my idea then. What I wish to know, Mr. GLAVIS, is this: Whether or not the suggestion which Secretary Brandeis made to you was not one in line with what you desired to have. That is to say, you had sent in these two telegrams, and it was known whether the office had fully considered those two telegrams when they gave you the peremptory order they did; isn't that right?

Mr. GLAVIS. Yes; in part. But my object in going to him was to have him direct it, so that there would not be any doubt about it.

Mr. VERTREES. Did I ask you about your object? I asked you if that which the Secretary did was not in line with what you were trying to have done?

Mr. GLAVIS. I answered, "Yes; in part."

Mr. VERTREES. That is all I want to know now.

Mr. GLAVIS. It was not fully in line. That is what I wanted to say.

Mr. VERTREES. It was in line. It was tending to help you. He refused to make an order, did he not, because of his previous connection with these claims, but as far as he could he suggested a thing which he thought would reach what you wanted?

Mr. BRANDEIS. Is that a question?

Mr. VERTREES. Yes.

Mr. GLAVIS. No, sir. He did not make any mention to me of a conference, in any way, as to his feeling of delicacy, owing to his previous connection with the claims.

Mr. VERTREES. I did not ask you whether he stated that. I asked you whether that is a fact.

Mr. GLAVIS. I think I answered that. Your question would be answered.

Mr. VERTREES. Did he not go further than that, if that was not done, in view of the situation that he believed the Cunningham claimants would stipulate as to that tunnel business, and what had been done out there—and that would save a great deal of time and expense?

Mr. GLAVIS. No, sir; he did not say anything about the time and expense.

Mr. VERTREES. Why did he say he believed they would stipulate?

Mr. GLAVIS. Because we were discussing it as a matter of evidence and not as to time and expense. I had all these other claims in Alaska to examine, whether the Cunninghams would stipulate to their field work or not.

Mr. VERTREES. Did he not know, and did you not know that that tunnel work, the outline and plan of it, had all been laid before Commissioner Finkle a year or two before, and that the commissioner had said to these people: "If you go along according to these lines, while I can not authoritatively advise you, I can say that I can see nothing improper about that," and that all that was known to the department before Mr. Ballinger had been commissioner.

Mr. GLAVIS. As to that letter Mr. Cunningham wrote and as to the reply Mr. Finkle gave, they did; but they had done work after that.

Mr. VERTREES. I am merely accounting for his suggestion to you about the stipulation, not, as a matter of fact, whether they had done more or less work, or whether it was wise or unwise. I am on the reasons why you understood suggestion was made, Mr. Glavis. Was not that a situation known to you all to be the situation?

Mr. GLAVIS. As to the improvements; yes, sir. But we did not know how much more they had done. I had no evidence showing me exactly what they did except as shown by their journal, and that letter would indicate, and also the report of Expert Hawkins would indicate, that they were working jointly; but I wanted definite evidence, such as only could be determined by field examination.

Mr. VERTREES. Well, I will get away from that. Now, I want to go back to your appeal to the Forestry Bureau, the Bureau of Forestry, and I want to know who first suggested that, and if you did not go to this man Allen that you have mentioned and talk to Mr. Allen, the forest supervisor at Portland, a few days before the 17th?

Mr. GLAVIS. Yes, sir; I have so testified.

Mr. VERTREES. And requested him to ask the forestry people to recommend the delay?

Mr. GLAVIS. Yes, sir; that is what I wanted him to do.

Mr. VERTREES. Did you ask him to do that?

Mr. GLAVIS. I answered, yes, sir.

Mr. VERTREES. That answers it. Now, then, did he do it?

Mr. GLAVIS. I do not know whether he did it or not.

Mr. VERTREES. Did you have any information as to that point?

Mr. GLAVIS. I heard that he wrote a letter afterward. I believe he told me himself that he wrote a letter; yes, sir. But I felt that it ought to be handled at once, and I sent a telegram, that of July 16, to Mr. Shaw.

Mr. VERTREES. Did not Mr. Shaw, first, however, before you did that, telephone you from Washington on February 15, after he had heard from Allen, that they would cooperate with you?

Mr. BRANDEIS. What date?

Mr. VERTREES. July 15, I mean. That they would be glad to cooperate with you?

Mr. GLAVIS. No, sir. I do not remember any such letter.
 Mr. VERTREES. Telegram, I stated.
 Mr. GLAVIS. I mean telegram.
 Mr. VERTREES. You do not remember any such?
 Mr. GLAVIS. No, sir. I do not.
 Mr. VERTREES. And thereupon did you not telegraph to M
 this, of which I now here hand you a copy?
 Mr. GLAVIS. Yes, sir.
 Mr. VERTREES. Well, now read it.
 Mr. GLAVIS (reading):

A.

SEATTLE, WASH., July 16

A. C. SHAW,
*United States Forest Service,
 Washington, D. C.:*

There are approximately 700 Alaska coal filings in Chugach Reserve, ca
 as "Clarence Cunningham group," about proceed to hearing. Cases of utm
 tance, property valued at millions. Would appreciate cooperation Fores
 by having your personal assistance. Could you proceed Seattle immediat
 (O. B. Govt. rates.)

Senator FLETCHER. Is that the first telegram you sent to M

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Is that an original paper, Mr. Vertrees?

Mr. VERTREES. No, sir; it is a copy sent up from the l
 office here. We have just received it to-day.

Senator FLETCHER. You offer it now?

Mr. VERTREES. Yes, sir; I would ask that it be put in evide

Mr. BRANDEIS. How is that signed? The signature v
 read.

Mr. GLAVIS. "Glavis, Chief." And it was sent on "O.
 government rates. That means, "official business," gov
 rates.

Mr. VERTREES. Did Mr. Shaw telegraph Mr. Allen on the 1
 ask him whether or not the Forestry Service requested a conti

Mr. GLAVIS. Well, now, I am not sure as to the date, bu
 about that time; I think it was the 17th.

Mr. VERTREES. And then on the 19th did not Mr. Shaw t
 Mr. Allen for reasons for the suspension?

Mr. BRANDEIS. I do not object to your asking in any inst
 the contents of written instruments here; but I think it oug
 known that these are papers that have not gone into the rec
 I think we should have them as they go in.

Mr. VERTREES. They are on file with the committee.

Mr. BRANDEIS. They may be on file, but they are not in thi
 and I think they ought to be in the record and that we ough
 have to rely on the recollection of the witness for the conten
 written instruments.

Mr. VERTREES. I will look at this just a minute. It v
 handed to me, Mr. Brandeis.

That is unsigned. I just ask for information who is that fr
 Glavis? First I wish to state that these papers that are no
 presented have just come up from the Forestry office.

Mr. BRANDEIS. Were these papers delivered to the comm

The CHAIRMAN. These papers were delivered to the commi
 ght, and you will recollect that I asked you before we ad

if you would accept them as coming from the department, or whether I should return them to the department.

Mr. BRANDEIS. I think, Mr. Chairman, you are inquiring in regard to certain entirely different papers. I am very glad to have them. I only asked for information.

The CHAIRMAN. What papers do you refer to? I supposed you referred to the papers that were under consideration last evening.

Mr. BRANDEIS. No; I am asking about certain papers that Mr. Vertrees has stated came from the Forestry Service.

The CHAIRMAN. A lot of papers came up after we commenced our hearing here. A man from the Forestry Service came up with a whole armful of papers, and I directed him to deliver them to the clerk.

Mr. BRANDEIS. I am quite content. I merely sought information, that is all.

Mr. VERTREES. In view of what has been said, I think it would be well just to read them now.

The CHAIRMAN. Very well.

Mr. VERTREES. Mr. Glavis, who signed that [handing paper to witness]?

Mr. GLAVIS. I think that is signed by District Law Officer Pierce; it sounds like it.

The CHAIRMAN. I am informed, Mr. Brandeis, by the clerk of the Committee that these are documents that came up from the Forestry Bureau after we commenced the hearing this afternoon.

Mr. BRANDEIS. And consequently have not been listed?

The CHAIRMAN. Have not been listed except by the clerk. He just made a list of them; just finished it.

Mr. BRANDEIS. That list will go into the record, I assume, as the other list did?

The CHAIRMAN. Yes. I am informed that the only ones so far listed—there is such a multitude—are the few that have been handed to Mr. Vertrees.

Mr. VERTREES. I will state in explanation when we came here to the opening session, we requested that these be searched out by the clerk, and he has just handed them to us [reading]:

B.

[28° E. N. 94. Paid Govt. Night.]

WASHINGTON, D. C., July 16, 1909.
No. 96.

L. R. GLAVIS,

Chief of Field Division, General Land Office, Seattle, Wash.:

Wells absent; impossible for me to leave here before August 10 or 15. Will come then direct to Seattle, if agreeable to all. Am wiring Allen, Portland, to assist you in every way in his power upon your requisition and if necessary to call on district forester at San Francisco for advice of district law officer, land, who is specially qualified. Associate forester especially anxious to cooperate and assist you in every way possible. He and I regret my inability to come at once.

SHAW.

Answer to No. 94.

Mr. GLAVIS. Some of these copies—some, I think—are incorrect, because that name should be Lane, the man's name in San Francisco.

Mr. VERTREES. Instead of reading all the details I will just read the substance of them and hand them to the stenographer to put in.

The CHAIRMAN. If there is no objection, that course will be taken.

(The next letter read by Mr. Vertrees is as follows:)

C.

[405. CH. HB. UY. 119. Paid. Night. Govt.]

WASHINGTON, D. C., J.

ALLEN, Portland, Oreg.

Glavis, Seattle, requests my immediate personal presence connection with hundred coal filings in Chugach forest, known as "Clarence Cunningham Says claims about to proceed to hearings and of utmost importance involving valued at millions. Have wired Glavis impossible for me to leave account absence, but that I can leave August 10 or 15 if necessary and agreeable to all suggested to him confer with you and have promised that you will give all assistance upon his request. In view importance cases I suggest if it is necessary assist your law officer that you wire Olmstad at San Francisco to send Land especially qualified. Mr. Price approves this telegram.

12.26 a. m.

Mr. VERTREES. Then there is a letter of July 16, 1909, dated Seattle, Wash. It seems to be a copy. I suppose that was written to you, Mr. Glavis?

Mr. GLAVIS. I recall such a letter, and the substance of it. I also—

Mr. VERTREES. You think it is yours?

Mr. GLAVIS. Yes; I think it is a copy. The letter is as follows:

D.

SEATTLE, WASH., July 16,

Mr. A. C. SHAW,

United States Forest Service, Washington, D. C.

DEAR MR. SHAW: I wired you to-day in reference to the Alaska coal case. I trust that you will be able to secure a continuance in the Cunningham group. I will, no doubt, have called for all my reports and papers in the case before you have not done so, I would suggest that you call for all the papers connected with the Alaska coal investigations. There are many phases to this investigation not of record, for obvious reasons. You will probably come to that conclusion after examining my reports. It is quite probable that some of the papers will be turned over to you. However, I have the same, and they would be very interesting to you.

These cases embrace practically the future coal supply of the United States. Efforts are now being made by the Guggenheim and Morgan interests to secure control of the entire field. This would make a monopoly similar to that of the Pennsylvania fields to-day, and on this account I don't believe that the people would allow such a condition to exist, for there are too many who are strong supporters of the preservation of our natural resources.

Another point involved, to which your attention is called, is that the entry has been withdrawn from all forms of entry. Therefore, should these filings be made, there would be no opportunity for other filings to be made. This would enable the Forest Service to secure certain legislation which would enable it to control the output of coal in a similar manner to that which they now are disposing of the same.

I hope you will be able to come out at once or secure a continuance. The reason for the delay will be apparent to you when you have examined my reports.

I think Mr. Pinchot is somewhat familiar with the Alaska coal-land question. Mr. Garfield gave me every support possible, and I think had discussed this with Mr. Pinchot and the President, for, as you see, it raises a very big subject.

Respectfully,

L.R.G./ES.

Chief of Field Division

Mr. VERTREES. The next letter is dated Portland, Oreg., July 17, 1909, and is as follows:

E.

PORTLAND, OREG., July 17, 1909.

SHAW, *Forest Service, Washington, D. C.*

Your telegram first information we have had regarding coal claims Chugach. Have made no examination or reports. Will give Glavis all assistance possible. Allen has written recommending postponing hearing until November 1. Urge immediate action his recommendation.

GEO. H. CECIL.

Mr. VERTREES. And then there is another dated Washington, D. C., July 17—I suppose it means 1909—which reads as follows [reading]:

F.

[216. Ch 9 g uy 94. Paid. Govt.]

WASHINGTON, D. C., July 17.

ALLEN, *Portland, Oreg.:*

Thirty-two of the coal cases of Cunningham group mentioned in yesterday's telegram situated on west side of Clearcreek near Kostakaw-Lake, Kyak mining district. No report from forest officer found in papers. Glavis final report not here. Early action being insisted by claimants and apparently by land office; appears that complete testimony to sustain charges not gathered; character of land apparently not involved; charges conspiracy. Please see Glavis record and wire Forester whether Forest Service should request continuance, and why; make telegram full and strong. Show Glavis this telegram.

SHAW.

1 p. m.

Mr. VERTREES. Do you know anything of that, Mr. Glavis [handing paper to witness]?

Mr. GLAVIS. I remember that there is a telegram something like that—I couldn't say whether that was a copy or not.

Mr. FINNEY. It looks to me like a request from you to cooperate.

Mr. GLAVIS. It quotes. Oh, I remember that now, but I do not know whether it is an exact copy. This is a telegram, I think, that will be found to be from District Law Officer Pierce, who is in Seattle, Wash., and conferred with me and went over the Cunningham papers; and then, through the orders of the department, they had to make recommendations through their superiors out West. He was in Portland, a district forester at Portland, so he had to send a telegram to his superior, and then have the district forester there send a telegram to the Forester here.

Mr. VERTREES. I had better read that, I suppose [reading]:

G.

SEATTLE, WASH., July 20, 1909.

DISTRICT FORESTER, *Portland, Oreg.:*

Please report following telegram to Forest, quote:

"Hearings in Cunningham group Alaska coal cases should not be set until pending investigation is completed, because Government's case could be established without calling claimants as our witnesses. As documentary evidence in Glavis's possession coupled with results of remaining evidence now being secured would enable making a prima facie case, this would force claimants to testify for themselves, and their affidavits and evidence given Glavis is sufficient to discredit on cross-examination. Glavis has asked me to furnish expert to report to Kennedy in coal fields."

End of quote.

Senator SUTHERLAND. What is the first part of it? I catch the introductory.

Mr. VERTREES (reading). "Please repeat following tele Forest"—meaning the Forestry Service.

Mr. JAMES. Was that last telegram or memorandum signed

Mr. GLAVIS. No, sir; none of them were signed.

Mr. BRANDEIS. It is necessary to know who signed the gram that was read, Mr. Vertrees.

Mr. VERTREES. I know nothing about it. I only read cause you seemed to insist that they should be read now. not had a chance to examine them.

Mr. BRANDEIS. We certainly want them read.

Senator FLETCHER. Did I understand Mr. Glavis recall that telegram was signed by a law officer named Pierce?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. Pierce was a district law officer?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So that it was in this way that the Forestry Service was induced to apply for a continuance?

Mr. GLAVIS. Yes, sir; they took the action themselves; up over the testimony and the papers in the Cunningham case then to that conclusion.

Mr. VERTREES. What I meant is that you went to Allen him to do this, initiated it, and this is the apparent result of

Mr. GLAVIS. I went to Allen first and then I sent the telegram the action taken is shown there.

Mr. VERTREES. Did you request Mr. Shaw to come out?

Mr. GLAVIS. Yes, I think I did, in either the letter or the you have read.

Mr. VERTREES. Now, in Senate document, look at page 4 your attention there to a letter from you to Mr. Schwartz, of Field Service Division, dated April 20, 1908. You say in paragraphs:

Before I am able to complete my report it will be necessary for me to interview of the entrymen now at Los Angeles, Cal., and I expect to procure from him a complete confession concerning the agreement appearing on page 1 of the journal.

That is the Cunningham journal, isn't it, Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES (reading):

And also the reference to W. B. Heyburn, found on page 5. Should it be to institute criminal proceedings I am quite sure that I will be able to secure stenographer's notebooks containing letters dictated by Clarence Cunningham. Mr. Heyburn.

Respectfully,

L. R. GLAVIS,
Chief Field

You say there you are quite sure you will be able to get the stenographer's notebooks. How were you going to get them, Mr. Glavis?

Mr. GLAVIS. I was going to go myself or send one of the stenographers—the stenographer—she was a public stenographer in a Seattle—that took most of Mr. Cunningham's dictation, thought she would probably keep the notebooks, and we went to try to get them. We thought, in view of the statement in the Cunningham journal of the connection of Senator Heyburn

hey would probably contain letters that Cunningham had written Mr. Heyburn.

Mr. VERTREES. That explains why you wanted them?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I asked you how you expected to get them from him or her, as the case may be.

Mr. GLAVIS. We intended to go there and see her and get them. You mean just the very way we expected to handle it?

Mr. VERTREES. Yes, sir. By what authority would the stenographer give them to you, is what I mean?

Mr. GLAVIS. She wouldn't have any authority. I had in mind the same system we used in getting evidence of that kind now, to ask her whether or not she was keeping her notebooks. I had in mind sending one of these agents there and telling her, and I think I did afterwards send an agent to her, afterwards in Tacoma, and he stated to her that he had given her some dictation about a year or so before and he would like to have some copies made from that dictation, and that he would be very glad to pay her for going through her books and finding those particular letters. Then, if she said she had the notebooks, that is all we wanted to know.

Mr. VERTREES. In other words, you were going to pay her for them?

Mr. GLAVIS. No, sir; you are interrupting me. I had not finished my answer. We then were going to find out where she was keeping her stenographer's notebooks, and after we found that out I instructed the agent to tell her not to destroy them, that we might want to subpoena her to bring the books and produce them in court, and then we were going to have her subpoenaed before the grand jury and have her read through her notebooks, or have somebody else do it.

Mr. VERTREES. That was the way you were going to do it, was it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, in the matter of sending these experts out to examine the coal fields, it was not done at all in 1908, was it?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Why was it not done then, Mr. Glavis?

Mr. GLAVIS. Because I was directed to discontinue the investigations on May 2, 1908, and not directed to resume the investigations of the Alaska coal cases until October 17, 1908. The field examination then could not be made during that year.

Mr. GRAHAM. What did you find in the introduction to the Cunningham group which made the notebook of this stenographer of any materiality?

Mr. GLAVIS. Where is that referred to?

Mr. GRAHAM. It is on page 474 of Senate Document 248, I think.

Mr. GLAVIS. In the notation that I refer to in that report, as to the necessity for it, I conclude by saying "that, should it be determined to institute criminal proceedings." That referred to Senator Heyburn, and it was first made on page 475, in which a memorandum is made of an agreement, or alleged agreement, with Senator Heyburn to look after the legal services and act as attorney for securing title, in consideration of which he was to get a coal claim up there.

Mr. GRAHAM. Is that what is in the book here at the bottom of page 5; is that what you refer to?

Mr. GLAVIS. It is on page 575. It is a memorandum in the Cunningham journal.

Mr. GRAHAM. At the bottom of page 5 of the journal?

Mr. GLAVIS. Yes, sir; at the bottom of page 5 of the journal.

Mr. VERTREES. Mr. Glavis, when you were instructed to work on the Cunningham group of claims, in the spring of 1909, had been at work on them up to that time, from January, had you not?

Mr. GLAVIS. I had been directed to start in. I did a little work in January and February, but I started the main work in March.

Mr. VERTREES. That is the main work, but you were working on them and you understood your orders to be merely an order of suspension. That was while you were in that field and had charge of that work. It had not been taken out of your control, had it not?

Mr. GLAVIS. No, sir; it was not taken out of my control.

Mr. VERTREES. You still had charge of it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Exclusively, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, your testimony on page 393—the fact that it occurs:

Mr. BRANDEIS. Would it have done any good—would it have advanced on these coal claims in the least if you had taken the steamer back and gone up to Katalla?

Mr. GLAVIS. No, sir; I could not qualify as a coal expert. My testimony would not be considered in that regard.

Mr. BRANDEIS. It would have been an absolutely useless performance, would it not? The CHAIRMAN. But it never occurred to you that summer to ask the department to send the experts up to examine the coal fields, did it?

Mr. GLAVIS. No, sir; I had been called off of it.

The CHAIRMAN. But it never occurred to you to ask for that in the summer?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Did it ever occur to you that that was urgent until 1909?

Mr. GLAVIS. It did occur to me before 1909.

Mr. JAMES. Was it your duty to be calling for experts upon some work which had been taken off of?

Mr. GLAVIS. No, sir; we never did it. We waited to be directed to resume.

You regarded it as very important work, did you not, Mr. VERTREES, from that testimony?

Mr. GLAVIS. Yes sir.

Mr. VERTREES. And you had the expert, Mr. Kennedy, there, had you not, under your control?

Mr. GLAVIS. No, sir; I had him in Oregon.

Mr. VERTREES. You had him under your control, did you not?

Mr. GLAVIS. Yes sir.

Mr. VERTREES. What I mean is, you could have sent him there, had he been minded to have done it?

Mr. GLAVIS. To examine the coal claims?

Mr. VERTREES. Yes.

Mr. GLAVIS. No, sir; not in view of the fact that I had been instructed to discontinue.

Mr. MADISON. You had been told that the appropriation had been exhausted, had you not, and that you would have to stop work on account?

Mr. GLAVIS. It also stated in the telegram—

Mr. VERTREES. They did not say that it had been exhausted, did they?

Mr. GLAVIS. No, sir.

Mr. MADISON. But that was the effect of it—that it was so near exhausted that the Government could not take any more funds out of the appropriation for that purpose. That is what they informed you, was it not?

Mr. GLAVIS. They could not give me enough men to do all the work. I wanted to continue the coal work, and also get some additional agents to do the criminal work, that is in Oregon, and they said that they did not have enough money to pay them all.

The CHAIRMAN. Will you let me ask a question right there, Mr. Vertrees?

Mr. VERTREES. Certainly, Mr. Chairman.

The CHAIRMAN. Turning to page 97 of the compilation, I want to call your attention, Mr. Glavis, to a telegram of April 29, 1908, and ask you to read it. It is the first telegram on the page. Please read that aloud.

Mr. GLAVIS. "Portland, Oregon, April 29, 1908"—this is a telegram from—

The CHAIRMAN. Read it.

Mr. GLAVIS. It is not addressed there, Mr. Chairman. It is only headed "Glavis to Commissioner, April 29th, 1908." It is as follows:

United States attorney desires investigation of Umatilla cases and of thousand cases in which patents must be attacked within next few months. Trials commence May 16. Hearings and Alaska cases will engage force until July. To properly meet situation seven additional agents necessary.

The CHAIRMAN. Now, those Umatilla cases referred to there were the Oregon cases, were they not?

Mr. GLAVIS. They were some of the cases in Oregon; yes, sir.

The CHAIRMAN. The Umatilla cases were Oregon cases, were they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that you called the attention of the department to the importance of these cases on the 29th of April, 1908, three days before you were directed by the department to go to Oregon. Is that not a fact?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. That is all.

Mr. VERTREES. Those were not coal cases, were they?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Now, although you were directed to suspend the work on certain lines on account of the depletion of the appropriation, is it not true that in May of that same year there was an appropriation?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And did you not on the 28th day of May receive this telegram, you being at Portland, Oreg., from Mr. Dennett, acting commissioner, which appears on page 116 of the list of compilations:

Secretary of Interior letter 12th released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28 revoked. Push work.

Did you get that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then on June 3, following that in the year 1908, did you not also get this letter from Mr. Dennett, commissioner,

dated June 3, 1908, and did you not get it in due course of Portland, Oreg.?

The CHAIRMAN. What page is that?

Mr. VERTREES. It is page 229 of Senate document, and is as

JUNE

Mr. L. R. GLAVIS,

Chief of Field Division, Portland, Oreg.

SIR: There is hereto attached copy of an act, approved May 28, 1908 ("To encourage the development of coal deposits in the Territory of Alaska."

You will, therefore, so modify the scope of your investigations and reports in reference to Alaska coal lands as is made necessary by the terms of the foregoing bill.

The General Land Office and the department appreciate the very thorough and efficient manner in which you conducted your investigation in reference to the situation in the Alaska coal matters. It was largely by your report of this office was enabled to prove by the record what are the necessities of the coal fields and what were the various efforts to unlawfully acquire title to such

Very respectfully,

FRED DENNETT, *Commissioner*

Now, notwithstanding there had been suspension of the work in April, were you not, both by telegram, as I have stated, and by letter of June 3, directed to go to work on these matters?

Mr. GLAVIS. No, sir; I did not consider either of them as matters, but—

Mr. VERTREES. And was not the trouble—

Mr. BRANDEIS. One moment; he has not finished his answer.

Mr. GLAVIS. And, furthermore, Mr. Schwartz did not consider it as such, as he directed me in October to resume my investigations.

Mr. VERTREES. Mr. Glavis, the point I wish your mind directed to is that when work was suspended you were in charge of the Alaska matters?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that there was a telegram telling you that the letter was released, and the appropriation had been made for the push work—meaning thereby all work—and that then this letter of June 3 followed, giving you a copy of the act and directing you to modify your action in view of that act, which related to the Alaska lands. Is that not true?

Mr. GLAVIS. No, sir; it is not. It is your conclusion that the telegram means all work. It reads—

The CHAIRMAN. I understood the question to be if it was not that you got such a letter.

Mr. GLAVIS. No, Mr. Chairman; the attorney has drawn the conclusion from the record, and he asks me whether that conclusion is correct. The only way I can answer it is to answer it in this way.

Mr. VERTREES. Let me get at it in this way. I want to get the interpretation of these orders. First, is it not true that they directed the matter and put you to such activities as the situation demanded, other duties to those other cases would admit of with respect to the Alaska coal lands?

Mr. GLAVIS. No, sir; it is not really the order directing me to resume my work on the Alaska coal cases.

Mr. VERTREES. Please go to the letter of Mr. Schwartz, which I speak of—it is on page 141 of the list of compilations—and I will tell you if that letter did not mean this, after reading it:

Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

Now, Mr. Glavis, did you not understand that order to mean this, that there had been a temporary suspension of the investigation because of the legislation referred to, and that since that time nothing had been done because of the condition of business in your district, not because you had been forbidden to do it?

MR. GLAVIS. No, sir; I considered it that it was my first order to resume in the investigation of the Alaska coal cases.

MR. VERTREES. I asked you though now, as to the language, if that is not what he says, that since that time "the condition of business is such that no further investigation has been had"—speaking of the fact, or the condition, and not as to the orders at all.

MR. GLAVIS. He states that in part in that letter.

MR. VERTREES. Now, do you mean to say that notwithstanding that telegram to you to push work—notwithstanding that letter of June 3, 1908, to you—that you did not feel at liberty to take steps with reference to the Cunningham cases, whatever might be necessary; for example, to send Kennedy, or anyone else that you could send, to Alaska?

MR. GLAVIS. Yes, sir; I think Mr. Schwartz believed this letter of October 7, 1908, to be the first instructions I received to proceed with that investigation, and in furtherance of that belief will be found, on page 139, Mr. Schwartz's recommendation to the Commissioner of the General Land Office, in which he says:

I am still of the opinion that these claims were fraudulent, and that the orders issued to Chief of Field Division Glavis at the time the Alaska coal bill was pending in Congress to summarily suspend his investigations should now be revoked.

And he was my immediate superior, having charge of the work and direction of my work.

Senator Root. What is the date of that letter?

MR. GLAVIS. That letter is dated September 23, 1909. It further says:

And he should be directed to proceed with a view to establishing, by the necessary evidence, the complete facts in relation to the Cunningham and Guggenheim claims.

MR. VERTREES. That is from Mr. Schwartz to the commissioner. I have asked you about this telegram of Mr. Schwartz to you—what it meant to you. You did not have that letter that you have just referred to before you at all, did you?

MR. GLAVIS. No, sir; but Mr. Schwartz, as shown by the letter of October 7, 1908, on page 141 of the list, initialed and in fact wrote the letter that was sent on October 7, 1908, by Mr. Dennett directing me to resume the investigations.

MR. VERTREES. But Mr. Schwartz's letter to the commissioner was not written until September 23.

MR. GLAVIS. I am speaking also of the one of October 7 directing me to resume.

MR. VERTREES. You wrote to Mr. Schwartz on April 27, 1905—and that letter is on page 514 of the Senate document—that—

In order to complete the investigations within the period designated by you, Special Agent Andrew Kennedy and Timber Cruiser Adams will be in Chicago.

And then you tell him of your itinerary, that when your the East is completed, you will return to Washington and do the work in the States, etc.—about 450 coal claims. Then

This will complete the investigations except field work, which as I stated in my telegram to you could not be attended to until July, and the interviewing of coal claimants in Alaska, amounting to some 75 persons. I had intended to have Special Agents H. T. Jones and Percy Smith make such investigations, but owing to your telegram of recent date that Mr. Jones is not available this work will be necessarily delayed until my return from the East.

Does that mean that you were going to have those two agents go and make the field investigations?

Mr. GLAVIS. No, sir; that means they were to interview coal claimants who resided in Alaska.

Mr. VERTREES. Do you not say there that "this will complete the investigations except the field work," and then follow that statement—

Mr. GLAVIS. You will have to read the whole letter.

Mr. VERTREES (reading):

Which, as stated in my telegram to you, could not be attended to until the interviewing of coal claimants in Alaska, amounting to some 75 persons. I had intended to have Special Agents H. T. Jones and Percy Smith make such investigations, but owing to your telegram of recent date that Mr. Jones is not available this work will be necessarily delayed until my return from the East.

You have already spoken of the investigations "except the field work."

Mr. GLAVIS (reading):

Except the field work and the interviewing of the coal claimants in Alaska, amounting to some 75 persons.

Mr. VERTREES. There are two things that you described as being covered by the investigations, are there not?

Mr. GLAVIS. Yes, sir; the exceptions made to complete the field work and the interviewing of the 75 persons. That is the whole of it. I would construe my own letter.

Mr. VERTREES. Is not this what you say: "This will complete the investigations except the field work;" meaning thereby that the field work is part of the work of the investigations, but it is not being completed?

Mr. GLAVIS. No; "this will complete the investigations except the field work"—and then there is a comma—"which, as stated in my telegram to you, could not be attended to until July," which refers to the field work; and the other exception is the interviewing of coal claimants in Alaska, amounting to some 75 persons, the exceptions being field work and the interviewing of those 75 persons.

Mr. VERTREES. Precisely; the investigations are to be of the interviewing of those 75 persons. Now, do you tell him there that you had intended those two men to make those investigations?

Mr. GLAVIS. I intended to make such investigations; that is, the interviewing of 75 persons. Mr. Vertrees, you misunderstood me. In my letter of this kind to Mr. Schwartz it was never necessary for me to go into details of telling him that H. T. Jones and Percy Smith were coal experts or were not competent to pass upon the coal claims and the improvements of coal lands. He knew that they were coal experts for that purpose.

Mr. VERTREES. Then you wish to be understood as saying that when you said that you did not mean that those two persons were to go to make the field investigation.

Now I understand it. Now, another thing that you have said was that it seemed curious to you that there was a change of the rules with reference to the land entries in the land office.

Mr. GLAVIS. I did not catch that.

Mr. VERTREES. I say, another thing you did state was curious to you was a change with reference to the land-office rules—the coal-land regulations after Mr. Ballinger came in. Did you not make that statement?

Mr. GLAVIS. I did, in my direct examination; yes, sir.

Mr. VERTREES. What did you mean by that? What idea did you mean to convey to the committee by saying that that was curious to you?

Mr. GLAVIS. Well, it was so shortly after he got in. That came during my direct testimony; it was merely incidental. It is not of such great importance.

Mr. VERTREES. Then you attach no significance to that at all?

Mr. GLAVIS. Not very much importance, but I think it came in in discussing the matter with Mr. Hoyt.

Mr. VERTREES. You say not very much. Do you attach any importance to it?

Mr. GLAVIS. There were certain changes made; yes, sir; but we merely thought it was strange that he made them so soon after he came into office.

Mr. VERTREES. I just wanted to know what you made of it. You will find in the evidence on page 317 a reference to it. Do you remember your statement on that point?

Mr. GLAVIS. No, sir; I do not, but I do not attach any great importance to it.

Mr. VERTREES. That answer does not quite satisfy me—"great importance." I want to know what importance you do attach to it. You made a statement with reference to the Secretary which referred to the commissioner—that he made a change of rules which looked curious to you. That is my recollection of your statement. You may have said peculiar. I do not remember as to that.

Mr. BRANDEIS. Have you a reference to the page where that appears?

Mr. VERTREES. I had a reference to it, but I can not put my hand on it just at present.

The CHAIRMAN. There are rules under the act of 1904 appearing in the testimony on page 315.

Mr. FINNEY. It is page 59 of the testimony, Mr. Chairman.

Mr. VERTREES. On page 59 of the testimony, about the middle of the page, you say.

We thought it was rather peculiar that Commissioner Ballinger should change the rules and regulations of the coal lands.

Now, do I understand you to say that you wished to attach no significance to that change at all?

Mr. GLAVIS. No, sir; it is just a statement there that we thought it was peculiar. In other words, we did not understand why it was done or for what purpose it was done.

Mr. VERTREES. Then on that page the following occurs:

The CHAIRMAN. You thought it was strange that he would change the regulations. Had he in fact made any change in the rules and regulations?

Mr. GLAVIS. Yes. The rules and regulations dated April 12, 1907, are from the former rules and regulations governing the entry of coal lands.

The CHAIRMAN. Now, briefly, state the substance of the change.

Mr. GLAVIS. I could not state all of them, but I remember one. That was the rule and regulations said that only one entry or filing would be permitted under the coal-land laws. Mr. Ballinger's regulations read only one entry would be permitted under the coal-land laws, while in the Portland Coal and Coke Company case had found two instances where two filings had been made for coal lands.

What I want to know is what was peculiar or strange about the sense that it in anywise reflects upon the official acts of the commissioner?

Mr. GLAVIS. I think why Mr. Hoyt and I commented on it was his action in the Wilson Coal Company case was fresh at the time in our minds, and a month or so after this Portland Coal and Coke Company case—we had had it then, I think; Mr. Hoyt did not have it definitely in mind and I told him about it, and I think that the fact that it came into consideration with the Wilson Coal Company case, is what made me comment upon it at all.

Mr. VERTREES. I am on the matter of what you state to the committee, not your comments then. I want to know what is it in the rules that looks peculiar or curious in the sense that it reflects at anything improper on the part of the commissioner or Senator Garfield, who approved these rules?

Mr. GLAVIS. The change that looks queerer in my mind than any other was the change striking out of the old rules that required a filing should be made.

Mr. VERTREES. I have not asked you about the nature of the changes; I am coming to that presently.

Mr. BRANDEIS. I thought you were.

Mr. GRAHAM. It appears to be relative as far as it has been responsive.

Mr. VERTREES. I submit that it is not.

Mr. GLAVIS. I had to draw the distinction as to the changes made as between one set of rules and the other, in order to make it understood.

Mr. VERTREES. Mr. Glavis, before we get to the changes, I want now to have you state to the committee is whether or not you wish to be understood as saying that there is something in the changes that is peculiar and significant—that is, of a character that less reflects upon the motives of those who changed them—than we will talk about the changes later. Do you say that there is something?

Mr. GLAVIS. No; I do think that a change of some kind can be predicated on that alone.

Mr. VERTREES. You say "on that alone"—that in part?

Mr. GLAVIS. That in part; and, well, considering all his other cases from the Wilson coal cases down, it would have a little significance without any definite proof, but standing alone it is absolutely material, I think.

Senator FLETCHER. What is the change? Let us have it, Mr. Glavis.

Mr. GLAVIS. There were several changes. The one that I want to mention now is the filing.

The CHAIRMAN. If you will turn to page 299 of the testimony, you will find the rules there and on the following pages.

Mr. DENBY. That does not show the changes.

Mr. MADISON. Go ahead, Mr. Glavis; tell us what changes you thought were peculiar.

Mr. GLAVIS. One was the fact that the old rules only allowed one filing, one coal filing, where the new rules changed that to read that only one entry would be allowed, and it left out the words "only one filing." They left that out, and by putting in parentheses "excepting" was what made it appear queer to us, that they intended to permit filings, provided they had not made entries, of course.

Mr. OLMSTED. Now, if I may ask you, what effect, if any, would that change have on the case to which you have just referred—that is, the Wilson Coal Company's case?

Mr. GLAVIS. It would not have any effect whatever on the Wilson Coal Company's case. I merely stated that the only reason, perhaps, why we commented on it at that time was the fact that just before this we had found out Mr. Ballinger's connection with the Wilson Coal Company's case. That was all. It did affect the Portland Coal and Coke Company's case to a certain extent.

Mr. GRAHAM. What rule are you referring to now? What is the number of it in the book?

Mr. MADISON. Under the new rule a person might make a number of locations and filings, might he not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And then abandon them, relinquish them to the Government, and move away and make other filings, and then finally effect an entry when a party had succeeded in making the location that he preferred. That would be the practical operation of the new rule.

Mr. GLAVIS. Yes, sir; that was the comment that we made at that time, or about the comment.

Senator PURCELL. The change was that one said "filings" and the other said "entry." Is that it?

Mr. GLAVIS. Yes, sir; that is, one said one person can have the benefit of one entry or filing only. That is rule 9 of the old regulations, and the new regulations read—

The CHAIRMAN. What page is that rule on, Mr. Glavis?

Mr. GLAVIS. That is on page 300, at the bottom of the page, in this book entitled "List of Orders, Letters, Telegrams, and other Exhibits."

Mr. JAMES. Mr. Glavis, under this rule, suppose one man made several filings and then only made one entry, could no other person make a filing on the land that he had formerly filed upon?

Mr. GLAVIS. Oh, yes, sir.

Mr. JAMES. He could go on and make another filing; that is, some other person could?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. And his filing did not become effective until this man made an entry?

Mr. GLAVIS. I think they would probably hold that it would disqualify the man if they found that he had two at the same time, but they often, or sometimes, have excitement out West in the discovery of coal like they do with the discovery of gold in the West, and a man first on the scene could locate a coal claim and sell it to the

next man who came along, and locate another and sell that one. They could speculate in that way on the public land, whereas they could not under the old regulations.

Mr. JAMES. But could he do that under the rule made by Secretary Ballinger?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Was it possible for him to do that?

Mr. GLAVIS. Yes, sir; we thought it was.

Mr. JAMES. And under the old rules it was not possible to do that?

Mr. GLAVIS. Yes, sir; that is the comment that Mr. Hoyt and I made. We did not go into it to determine the matter, but that was our opinion.

Mr. MADISON. Now did the old rules—I do not know what they were—disqualify a man from making a second filing? If he made one filing that disqualified him from making a second one, did it?

Mr. GLAVIS. Yes, sir; rule 9—

Mr. MADISON. He had then used his rights, so far as acquisition of the coal land was concerned, when he had made one definite filing?

Mr. GLAVIS. Rule 9 of the old rules and regulations says:

One person can have the benefit of one entry or filing only. He is disqualified by having made such entry or filing alone or as a member of an association—

Mr. JAMES. But the new rule—

Mr. GLAVIS. Pardon me; I had not finished quoting it.

Mr. VERTREES. I think I can bring that out pretty clearly, if I am allowed to do so.

Mr. MADISON. I would like to have Mr. Glavis read the new rule. You have read the old one. Now let us have them in the record side by side.

Mr. GLAVIS. I had not finished reading that part of it. It continues:

No entry can be allowed an association which has in it a single person thus disqualified, as the law prohibits the entry or holding of more than one claim either by an individual or an association.

Senator PURCELL. Are you reading from the old or the new rules?

Mr. GLAVIS. That is the old rule.

Mr. GRAHAM. You will find other rules on pages 310 and 311 of the same document.

Mr. GLAVIS. Yes, sir. Rule 5 of the new rules and regulations, on page 310 of the record of testimony, is as follows:

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, will not hereafter be recognized.

The CHAIRMAN. Mr. Glavis, those were rules under the general coal-land laws in the Revised Statutes, were they not?

Mr. GLAVIS. No, sir; not in the Revised Statutes—

The CHAIRMAN. I do not mean the rules, but those were rules under the general coal-land laws, were they not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. While Congress passed an act in 1900, I think, applying the general coal-land laws to Alaska, as a matter of fact,

they could not apply because there was no surveyed land. Is that not true?

Mr. GLAVIS. In Alaska?

The CHAIRMAN. Yes.

Mr. GLAVIS. Oh, yes, sir.

The CHAIRMAN. So that there was no law under which they could make entries in Alaska until the law of 1904 was passed. Is that not true?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And under that law of 1904 there were two steps required—first, the location, by staking out the claim and filing notice in the recorder's office of the district and with the register and receiver. Is that not correct?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And that must be done within a year after the location was initiated?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. And then within two years after, or within three years from the time of making the first location, an application could be made to the register and receiver for leave to enter the land and pay for it. That constituted the entry, did it not?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So there were two processes—first, a location, and finally the entry of location must be made within a year of the entry, and then a final entry within three years—under the Alaska law?

Mr. GLAVIS. Yes, sir. These rules and regulations only refer to the general coal-land laws in the United States.

The CHAIRMAN. And had no relevancy or application to Alaska. Is that not true?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that it would furnish us no guide to compare these rules under the general coal-land laws with the rules that were laid down under the law of 1904. Is that not true?

Mr. GLAVIS. Yes, sir. Both of these rules and regulations refer to the same statutes exactly.

Senator PURCELL. That is, they were in vogue in Alaska?

Mr. GLAVIS. No; neither of them referred to Alaska, but both sets of rules and regulations refer to the same section of the Revised Statutes; that is, they both referred to section 2347—

Senator PURCELL. Pardon me. Prior to the change of the rules by the Secretary, changing the rules as you contend, under what law and what rule did they acquire or attempt to acquire the coal land in Alaska?

Mr. GLAVIS. They had a different set of rules.

The CHAIRMAN. That is what I have been trying to get at. If you had answered it right away we would have made more progress. I meant that there was a different set of rules under the general law in 1904.

Mr. GLAVIS. Yes, sir.

Senator PURCELL. Can you direct us to those rules that were acted upon and in vogue and in use in Alaska prior to the act of May 5, 1908?

Mr. GLAVIS. No, sir; I do not think they are in here.

Mr. BRANDEIS. I think I may be able to give them to you.

Senator FLINT. Look on page 314 of the testimony.

Mr. MADISON. Your comparison was between two sets of rules, each applicable to the coal lands in the United States, but had no reference to Alaska whatever.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. That is true, is it?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. One set of rules was made by a previous commissioner and the second set of rules was made by Mr. Ballinger. That is correct, is it not?

Mr. GLAVIS. Yes, sir.

Senator PURCELL. Now then, if the rules that you speak of—the first set—did not have any application to the coal lands of Alaska, how could the change that he made in those rules affect Alaska unless they were specially—

Mr. GLAVIS. I will say—

Mr. JAMES. I notice on page 314 of the testimony what purports to be the act relative to coal lands in Alaska, and section 4 provides:

That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska.

Mr. GLAVIS. Yes, sir.

Mr. JAMES. Now, were the same regulations relative to these laws, which, they say, "if not in conflict with the laws of the United States shall be in force in Alaska," in force in the department relative to the Alaska lands where they did not conflict with the laws of the United States relative to coal lands?

Mr. GLAVIS. Well, I do not know as to that, but they did prepare rules and regulations—

The CHAIRMAN. Will you allow me to call your attention to page 314 of the testimony, beginning at the bottom? You will there find the special rules under the Alaska act of 1904.

Mr. GLAVIS. That was the page I was reading from.

The CHAIRMAN. Those are the rules under that Alaska law.

Mr. JAMES. Yes.

Mr. VERTREES. Mr. Glavis, the rules in force at the time this alteration was made are the rules which are known as the rules approved by Secretary Teller, were they not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then those changes were made by Commissioner Ballinger and Secretary Garfield. Is it not a fact that they revised the rules; that there were various systems, and they attempted to codify them and reduce them to a system?

Mr. GLAVIS. That is what caused our comment. We did not know what was their purpose.

Mr. VERTREES. And they were made or promulgated both by the commissioner and the Secretary, were they not?

Mr. GLAVIS. They were approved by the Secretary; yes, sir.

Mr. VERTREES. Well, "approved," if you prefer that word. Now the difference that you have spoken of so far was this that under the old rule persons or associations of persons locating or entering coal lands in the District of Alaska under the provisions of the act amendatory of the act, etc., are required to possess certain qualifications. Paragraph 9 of the old rules and regulations, under the general land laws, said this, did it not: "One person can have the benefit of one entry or filing only;" whereas the new rule changed that phraseology

so as to say that but one entry of coal lands by any person or association is allowed by the law, and then added: "No person who, and no association, any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder." In other words, it struck out the word "filing" in the first and incorporated the word "hold" in the last, that is, these rules did, so that they were forbidden to enter or hold more than one piece, putting in that more comprehensive wording of holding. That was one change that was made, was it not, Mr. Glavis?

Mr. JAMES. Right there, Mr. Glavis, is that not the same rule relative to coal lands in Alaska—rule 5 on page 315? I followed the language and it appeared to me to be the very same rule.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. That is the rule in the coal land-law of Alaska?

Mr. GLAVIS. Yes; it is the same as the rule under the United States laws.

Mr. VERTREES. Now, is this not true, that paragraph 5 of the new rule covers or overreaches paragraph 37 of the Teller circular, which permitted assignments of the declaratory statement. Assignments of the declaratory statement were allowable under the old law, and that was forbidden was it not, under the new law, and does it not provide that the assignment of a preference right of entry under section 346 shall thereafter be recognized?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, that was a very rigorous provision, was it not?

Mr. GLAVIS. As to the assignment; yes, sir.

Mr. VERTREES. Well, it absolutely forbade it. Section 7 of the Ballinger-Garfield circular of April 12th contains the following regulations, that included the Teller circular, namely:

There is no authority under which a coal mine upon public land, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes.

Now, that was an addition that was not in the other, was it not?

Mr. GLAVIS. I do not know. I do not recollect it well enough to state.

Mr. MADISON. Where are the old rules?

Mr. GLAVIS. On pages 300 and 301 of the testimony.

Senator PURCELL. And pages 310 and 315. There are three sets there. Page 300 is what you refer to.

Mr. VERTREES. Another rule I want to call attention to—

Senator FLETCHER. Before you pass from that question of assignment, look at rule 24, on page 317. Does that not provide for assignments?

Mr. VERTREES. I will state that that relates to Alaska. The statute provides for assignments there.

The CHAIRMAN. Section 2 of the Alaska act authorizes assignments. I call your attention to page 314 of the testimony. You will see that the second section authorizes that.

Mr. VERTREES. Yes; the law does provide that.

The CHAIRMAN. I mean the law itself.

Senator SUTHERLAND. Has not the witness said that the changes in these rules could not have any relation to the Alaska situation?

Mr. MADISON. He said that positively in reply to my question.

Mr. GLAVIS. Yes, sir; I think so.

Senator SUTHERLAND. If that is true, it would seem that we are wasting our time in inquiring about the——

Mr. VERTREES. Still he persisted in hooking it on to the Wilson case, and I was trying to show that those rules promulgated by the Secretary and the commissioner were much more severe than the previous rules.

Senator SUTHERLAND. Still he does state that they could have no reference to the Alaska situation, as I understand.

Mr. OLMSTED. He also said that they had no reference or allusion to the Wilson case. The comparison of the rules can be readily made.

Mr. VERTREES. Still he persisted in saying that they looked peculiar and strange and that he would not stand for that, and I wanted to show that they were not peculiar or strange, except that they were more severe on the claimants than the other rules, and therefore could not favor anybody.

Mr. OLMSTED. Maybe that is what is peculiar about it.

The CHAIRMAN. Before adjournment I wish to state that I have received the following letter from S. S. McClure in response to a letter written to him under date of January 26, 1910:

McCLURE'S MAGAZINE,
44-60 EAST TWENTY-THIRD STREET,
New York, February 14, 1910.

DEAR SIR: I have a copy of your letter of the 26th of January, asking me to appear before your committee which is investigating certain departments in regard to conservation.

I have no first-hand knowledge of any sort. The article in the January number of the magazine was prepared by Mr. Turner, who, for the purpose of getting as much information as possible, made a study of the matters, going to Seattle to verify certain particulars. But his knowledge is necessarily based upon documents and information and not upon personal study of matters in Alaska. His collaborator in the article was Mr. John R. Lathrop, who has been in Alaska. His address is 3759 Maryland street, Chevy Chase, Washington, D. C.

Thank you very much for the courtesy of your invitation. I am sure that through your chairmanship the full truth will be brought out for the interest of the public.

Faithfully, yours,

S. S. McClure

Hon. KNUTE NELSON,
United States Senate, Washington, D. C.

The CHAIRMAN. The hearing will now be adjourned until Friday morning at 10 o'clock.

(Accordingly, at 5 o'clock p. m., the committee adjourned on Friday, February 18, 1910, at 10 o'clock a. m.)

FRIDAY, FEBRUARY 18, 1910.

JOINT COMMITTEE TO INVESTIGATE THE INTERIOR DEPARTMENT AND FOREST SERVICE, Washington, February 18, 1910.

The Joint Committee to Investigate the Interior Department and Forest Service met pursuant to adjournment at 10 a. m.

Present, Senators Nelson (chairman), Flint, Sutherland, Fletcher, and Purcell; Representatives Olmsted, Denby, Madison, Ames, and Graham; Mr. Paul Sleman, secretary; also Mr. Louis

Brandeis and Mr. Joseph P. Cotton, jr., representing Mr. Louis R. Glavis; also Mr. George Wharton Pepper, representing Mr. Gifford Pinchot; also Messrs. John J. Vertrees and Carl Rasch, representing Secretary Ballinger; also Mr. E. C. Finney.

The CHAIRMAN. The committee will please come to order. A quorum is present. Mr. Glavis will please take the stand and the cross-examination will proceed.

Mr. VERTREES. Mr. Chairman, we ask for a subpoena to issue for Mr. Adolph Behrens, of Seattle, Wash., to appear before this committee as a witness.

The CHAIRMAN. Very well; we will have the subpoena issued.

Senator FLINT. Are we going to proceed without any statement as to what they are going to testify to, witness after witness?

Mr. VERTREES. I will state if you desire it, Senator. Mr. Glavis has testified that Mr. Dennett had a conversation at Seattle with Mr. Behrens, or rather he had a conversation with Mr. Dennett, in which Mr. Dennett denied any acquaintance with Mr. Behrens and when Mr. Behrens came in he recognized him. He and Mr. Behrens went off to lunch together. Then he told him he had had correspondence with Mr. Behrens with reference to a certain matter. I desire and propose to prove by Mr. Behrens that no such thing ever happened. That he did not know him prior to that time. That he did not go to lunch with him and did not write him anything connected with the matter.

Mr. JAMES. I think he said he invited him to lunch, not that they went out together.

Mr. VERTREES. He did not invite him then. I predicate it upon the affidavit of Mr. Behrens. I have a copy now and can read it if desired. It is the foundation for my application.

The CHAIRMAN. Very well, Mr. Vertrees—

Senator FLINT. I think, Mr. Chairman, we ought to make it a rule, or understanding at least, that a witness ought not to be subpoenaed without any formal statement, or a statement should be made by counsel as to what they expect to prove.

Mr. VERTREES. I have a copy of the affidavit.

Senator FLINT. This statement is ample, there is no question about that, and it should be made in every instance.

The CHAIRMAN. I think this statement is sufficient.

Mr. VERTREES. At the last meeting there was a report filed—copy of a report—from Special Agent Love as to claimant Mullen and we were requested to give the date of that; we did not give it at the time—the date of the receipt. I have this communication, addressed to Mr. Louis Brandeis, dated February 16, 1910:

DEPARTMENT OF THE INTERIOR,
Washington, February 16, 1910.

MR. LOUIS BRANDEIS,
Attorney at Law.

DEAR MR. BRANDEIS: In accordance with your request to be advised of the date of receipt in the General Land Office of report of Special Agent Love, dated November 12, 1907, relating to the Alaska coal entry of Ignatius Mullen, I have to advise you that the records of the General Land Office show that said report was received in that office November 27, 1907.

Very respectfully,

E. C. FINNEY,
Assistant to the Secretary.

The CHAIRMAN. That is a reply to a letter of Mr. Brandeis.

Mr. VERTREES. I desire that to be inserted in the record. reply to the inquiry of Mr. Brandeis at the last meeting to date be given. Mr. Glavis, when we adjourned we were subject of the new rules and regulations with respect to locations and entries made by Commissioner Ballinger and Secretary Garfield. I had understood you to tell the committee that that those rules, as made, was peculiar and strange to you wanted to ask you as to the difference between the old rules new. I was proceeding upon the assumption that you were reasonably acquainted with the land laws, inasmuch as I find 124 of the list of letters, telegrams, etc., this letter from your commissioner:

Matter mentioned in your wire June 27. I believe Forest Service should perform all work, including handling of hearings, or none at all. However results would be had if all investigations were made by special agents General Office, because forest-service officers have no idea value of evidence and macy in securing same. Few understand land laws.

Now, do you not know, Mr. Glavis, that the rules made by Secretary Garfield and Commissioner Ballinger were really limited upon the power of dealing with land locations instead of a violation of this? Is not that true?

Mr. GLAVIS. In part.

Mr. VERTREES. Well, do they expand them in any way?

Mr. GLAVIS. I think they do, by allowing more than one entry to be made.

Mr. VERTREES. Was not this the state of the law, that under the old law there could be filings but could not be assignments or assignments of filings? I speak now of the general land laws.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And did not these new rules put an end to the assignment?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. There was no longer any possibility of an assignment in the filings. Is that not true, Mr. Glavis?

Mr. GLAVIS. Yes, sir, as far as the assignments were concerned.

Mr. VERTREES. And did not that bring the question down to these new rules then required that the man should enter or hold that no one could either enter or hold more than one piece— the word "hold" there?

Mr. GLAVIS. What rule do you refer to?

Mr. VERTREES. I speak of the rule that you thought was suspicious and suspicious—rule 5.

Mr. GLAVIS. I did not necessarily say that it was suspicious. I merely commented upon it, that was all. Why, I think you consider the rules with the form of affidavit which was required under those rules.

Mr. VERTREES. Now, I was about to get to that affidavit have anticipated me a little. At the bottom of page 31 of the record you will find something relating to the rules. Does it provide there in the new rules that there is—

no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the limits of mining and improving of the mine?

Is not that a new rule altogether and was not in the old rules?

Mr. GLAVIS. It seems to me that it is.

Mr. VERTREES. I now come to the affidavit—

The CHAIRMAN. On what page of the record do you refer to?

Mr. VERTREES. On page 310 of the record of the hearings, at the bottom of the page. The new rule there would absolutely prevent those who had entered upon the land to work them for sale of the coal or beyond the opening and improving of the mine as a condition to a preference right under section 2348, and was not the preference right of entry preserved by rule 5 on 310—

Mr. GLAVIS. Pardon me, Mr. Vertrees; you say that affidavit—which one do you mean? There are two affidavits.

Mr. VERTREES. I have not come to the affidavits.

The CHAIRMAN. He refers to the rule on page 310. Confine your answer to that for the present.

Mr. GRAHAM. Which rule?

The CHAIRMAN. Rule 5.

Mr. VERTREES. It was part of rule 7, page 310, that I read:

There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes.

Is not that an altogether new provision?

Mr. GLAVIS. I think it is.

Mr. VERTREES. Going back, Mr. Glavis, to section 5, which reserved the preference right to entry, was not that a form of location that was entirely allowable?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is true. Now I come to the affidavit. Look at page 311, and in the affidavit prescribed by Secretary Garfield and Commissioner Ballinger there appears this:

I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever.

Is not that a new provision inserted in these new rules?

Mr. GLAVIS. I am not sure as to that; I would have to compare—

Mr. VERTREES. Look at page 302 of the old ones, or rather page 301; it is rule 23, on page 301 and at the top of page 302.

Mr. GLAVIS. Yes, sir; as to that affidavit it does.

Mr. VERTREES. That is true. Now, going to page 312, is there not an affidavit required there by section 15 with reference to purchases by associations of persons, and is that not entirely new, not to be found in the old rules at all—about the middle of page 312—requiring each member of an association to make the affidavit?

Mr. GLAVIS. As I recall it, it is.

Mr. VERTREES. You recall it is new?

The CHAIRMAN. What is your answer to that?

Mr. GLAVIS. As I recall it, it is.

The CHAIRMAN. That it is a new rule?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, look at rules 17, 18, and 19, as to the notice and publication to be made to warn and notify others so that they can make their claims. I will ask you if they are not entirely new, and if they were in the old rules?

Mr. GLAVIS. I think that is so.

Mr. VERTREES. And is it not true that the forms of notice for publication prescribed on page 313, warning persons of the application are entirely new?

Mr. GLAVIS. I think they are, too.

Mr. VERTREES. And is it not true that part second, relating to Alaska, is the first code of rules that was established for Alaska?

The CHAIRMAN. Where is that part second?

Mr. VERTREES. On page 314, part second. I mean by that the first complete and orderly set. There had been some rules made, but the first time they were systematized?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is true; and did you not know that it was also true that the act itself, so far as Alaska was concerned, the Congress, provided that locations might be assigned, and that, therefore, they could not be prohibited as they had been prohibited by new rules with reference to lands in the United States?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. All that is true. And yet, with these admissions and changes in the respects mentioned you have said to this committee that the fact that Commissioner Ballinger made rules of that character, although they were approved by the Secretary of the Interior, were causes of suspicion in your mind.

Mr. GLAVIS. No, sir.

Mr. VERTREES. That they were curious and peculiar to you, did you not make that statement?

Mr. GLAVIS. No, sir; not quite in that language. I think Mr. Hoyt and I merely commented and said it was peculiar that the change was made relative to the filing—not that there were no good provisions in the changes as made, but our comments were merely—our comments were confined strictly to the change in the filing, allowing by the omission, more than one filing of coal lands in the United States. Our criticism and comments had nothing to do with the Alaska feature of the rules and regulations.

Mr. VERTREES. Still, Mr. Glavis, is it not true that you made this committee to draw unfavorable inference from the fact that there had been a change in the rules, which change you pronounced peculiar? If you did not, why did you bring it here and state it?

Mr. GLAVIS. It was merely a part of my statement of the facts.

Mr. VERTREES. I am aware it is a part of your statement, but I am asking you why you made such a thing a part of your statement.

Mr. GLAVIS. Because I thought it would be given considerable weight by the committee deemed it ought to be. I did not lay any particular stress on it.

Mr. VERTREES. Did you lay any general stress on it?

Mr. GLAVIS. Just as I have stated. Mr. Hoyt and I have commented upon that change in the rules and regulations.

Mr. VERTREES. And to your mind it was of sufficient importance to be presented to the committee as something reflecting to a great and less extent upon the good faith and proper conduct of Commissioner Ballinger. Isn't that true?

Mr. GLAVIS. No; not necessarily.

Mr. VERTREES. Then why did you state it?

Mr. GLAVIS. Unless they wanted to consider this, I thought, with the other facts.

Mr. VERTREES. Mr. Glavis, it is not what these gentlemen wanted to consider that I am asking you about. I am asking you about what you considered, why you should bring such a thing as that here and present it to the committee as something strange and curious to your mind unless it was for the purpose of telling this committee something from which there ought to be drawn an unfavorable inference.

Mr. GLAVIS. No, sir; that was not particularly my purpose. In giving this testimony I think I made other statements that have been favorable to Mr. Ballinger.

Mr. VERTREES. Do you consider that an answer to my question?

The CHAIRMAN. I do not consider that answers the question. Read the question.

(The stenographer reads the question: "It is not what these gentlemen want to consider that I am asking you about. I am asking you about what you considered, why you should bring such a thing as that here and present it to the committee as something strange and curious to your mind unless it was for the purpose of telling this committee something from which there ought to be drawn an unfavorable inference?")

Mr. VERTREES. You will perceive, Mr. Glavis, that I am not asking what was particularly your purpose or generally your purpose, or whether or not this was in your mind, and this was part of your purpose to bring a fact here and state it to these gentlemen of the committee, which to your mind was one that was unfavorable to the official conduct of Commissioner Ballinger. If you did not have that purpose and object in your mind, what did you state that fact for?

Mr. GLAVIS. Because it was a part of the facts.

The CHAIRMAN. Did you or did you not have that purpose?

Mr. GLAVIS. I did not—no, sir; I do not think I had that purpose in mind when I made that statement.

The CHAIRMAN. Well, then, what did you make it for?

Mr. GLAVIS. Because it was a part of the facts relating to his conduct as commissioner.

Mr. VERTREES. Did it carry an unfavorable significance to your mind, Mr. Glavis—that fact?

Mr. GLAVIS. No, sir; not particularly. We could not understand it.

Mr. VERTREES. I object to the answer particularly. I would like to have you say whether it did or did not—yes or no—have any unfavorable inference of such a tinge and tint that you thought it ought to be stated to this committee investigating the conduct of a public official?

Mr. GLAVIS. Yes, sir; I thought it ought to be presented to the committee.

Mr. VERTREES. Why?

Mr. GLAVIS. So that they could consider it, whether good or bad.

Mr. VERTREES. To your mind was it good or was it bad?

Mr. GLAVIS. The one change that I mentioned particularly in it I think is a bad change.

Mr. VERTREES. I am not asking you about the bad change in the law, but the fact that you presented it as a whole—that he had made these changes in these rules. Why did you bring that fact here and

present it to this committee? That is what I want to know; or put it otherwise, was it because to your mind it had a significance and was injurious to this official?

Mr. GLAVIS. No, sir; I do not think it was——

Mr. VERTREES. You do not think it did——

Mr. GRAHAM. Mr. Vertrees, won't you please let him finish in his own way? I doubt if you would have concluded as he would have done, and I think that spoils—at least, to my mind it is a spoil—the effect of the evidence.

Mr. VERTREES. I, of course, Mr. Chairman, do not like to compel but I do submit this, that I think the witness shows a disposition to give every answer with a string to it, and to give a qualification to this, that, and the other thing not called for by the questions. Now, I have asked the question in a different form eight or ten times, it is to my mind—and I submit it with all deference—a plain question which can be easily answered, to get at the purpose and motive and the object of the witness. He comes here with an array of facts and statements, and states them and itemizes them and details them. Now, it seems to me that it is pertinent, a fact of this, which I will say, to my thinking, has no hurtful significance at all, but just the reverse, as I see it. I may be in error about it anyhow, but when he suggested that as a thing which was peculiar or strange, I wanted to know the workings of his mind on that point and get at the motive of the man, whether it is innocent or malicious and I think it is a relevant question.

Mr. BRANDEIS. Mr. Chairman, has not the witness stated, stated repeatedly, his purpose? He stated definitely that he wished to call to the attention of the committee the facts which seemed to him of some importance in enabling the committee to form a correct conclusion of Mr. Ballinger's conduct. Now, Mr. Vertrees might as well in any ordinary case built up from a huge multitude of facts ask the purpose of putting in any one fact out of a great number which makes up the whole evidence in the case. The facts are stated because they are facts, and there is not any particular motive except the motive of telling the truth, which impels the witness to state the fact necessarily more than another.

Senator ROOT. I do not understand that there is any question about that.

Mr. GRAHAM. I want to explain my position first, by a word. I do not blame Mr. Vertrees for getting impatient at times because of the witness's constitutional hesitation of speech, but as Mr. Vertrees says, he wants to get the witness's answer about this matter so that he can judge of his motive. That is very proper, but in order to do that the answer must be the witness's answer, and not one thing suggested by the attorney. That is the point that I want to make. I want to get the witness's answer.

The CHAIRMAN. I want to say to counsel and to Mr. Graham that it is apparent to me that in most every answer the witness has given he has always had a string to it. He has hardly ever given a direct answer to any question. If it were in a court of justice where we were proceeding according to the rules of evidence, that would not be permitted to the extent that it has been carried on, but we are handicapped here by the fact that we are moving without any rules of evidence, and the chair under those circumstances is helpless.

enforce any rules of evidence, and we can not prevent the witness from adding an addendum to every question that is put to him. I will say further that the committee will be able to judge of these things upon the facts produced, and all the effect of his lengthy answers with argument will simply be to delay the proceedings. Proceed.

Mr. GRAHAM. Without assenting to the chairman's characterization of the witness's testimony, and in fact dissenting from some of it, I still insist that even if it were true it would not justify anybody in adding to the witness's answer for the witness.

Senator ROOT. Let us have the question and answer, Mr. Reporter. The reporter read as follows:

I am not asking you about the change of the law, but the fact that he had made these changes in these rules. Why did you bring that fact here and present it to this committee? That is what I want to know; or, to put it otherwise, was it because to your mind it had a significance that was injurious to this official?

Mr. GLAVIS. No, sir; I did not think it was—

Mr. VERTREES. You did not think it did—

Mr. GLAVIS. I did not think it was, but I felt that it was part of the facts, to my knowledge, that I ought to present to the committee.

Mr. VERTREES. Mr. Glavis, as I understand you, the facts which you have seen fit to present to the committee range themselves into two classes—those that related to the official action of Secretary Ballinger and other officials and those that related to the action of Mr. Ballinger as an individual during the interval while he was a private citizen, between the time when he ceased to be commissioner and when he became Secretary?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I will ask you to refer again to the particular thing which Secretary Ballinger did while he was a private citizen—that is, between the 4th of March, 1908, and the 4th of March, 1909—that you have seen fit to present to the committee, and from which you wish an unfavorable inference drawn.

Mr. GLAVIS. The first act, I think, was when Mr. Ballinger returned from Washington, D. C., and I conferred with him about April 1, at which time I told him about the evidence I was securing and how I was getting along.

Mr. VERTREES. What year now?

Mr. GLAVIS. April 1, 1908. It is between that period—between March 4, 1908, and March, 1909, that you want me to refer to?

Mr. VERTREES. That is right; yes, sir.

Mr. GLAVIS. And having, as commissioner, been connected—having information concerning the investigation of these particular coal cases, and then deliberately represent coal claimants themselves, which was contrary to an act of Congress, although there had been a decision favorable and unfavorable upon that point, I felt that the act of Congress itself was entirely clear, and felt that it prevented him from doing that.

Mr. VERTREES. You speak from representing the Cunningham people?

Mr. GLAVIS. And the other claimants that he represented during that year that he was out of office.

Mr. VERTREES. Who else?

Mr. GLAVIS. He represented the Green group—some of the claimants in that.

Mr. VERTREES. Well, who else?

Mr. GLAVIS. I do not recall now. There were some others in the record shows that he had worked for, but I do not recall the names.

Mr. VERTREES. Now, these statements that you are making are predicated on your own knowledge or what you say the record shows?

Mr. GLAVIS. As to the Green group and Cunningham group, from my own knowledge, and also it was a general statement made by Mr. Ballinger to me that he was doing this work. He did not say except the particular instance was the Cunningham group.

Mr. VERTREES. What were the things that he did with regard to the Cunningham group of claimants—and I speak now as a citizen.

Mr. GLAVIS. Well, he prepared an affidavit for Mr. Cunningham, which he took to Mr. Garfield in the East, with a view to securing their patents. He also—

The CHAIRMAN. With a view to securing what?

Mr. GLAVIS. Their patents. He also saw me in the fall of 1891, discussed the case with me as to how they could secure their patents.

Mr. VERTREES. The impropriety then was not in what he did, as I understand you, but in the fact that having resigned the office after he retired he assumed to represent persons who were claimants. Is that it?

Mr. GLAVIS. No, sir. Now, that kind of a question, Mr. VERTREES, I do not want to explain all the time—but that requires an explanation, I think.

Mr. VERTREES. If you think so, you may make one. I can be answered, but if you think it needs an explanation, you may then explain afterwards.

Mr. GLAVIS. No, sir; it is also in reference to his conduct, in drawing up that affidavit, because Mr. Ballinger told me that he thought I was right, and realized that it was going to be a pre-arranged thing for the Cunningham claimants to get their title. So, when realizing that, and then trying to get the title, he was doing so in furtherance of securing title for fraudulent claims.

Mr. VERTREES. In other words, your idea is that although Mr. Ballinger, representing these people, drew up an affidavit in which he was making the best showing he could on his facts, he expressed his opinion to you that there was very great doubt about such a title. Is that it?

Mr. GLAVIS. Yes, sir; he said he did not know how they could secure that title.

Mr. VERTREES. He did not know how they could, and then you think that that was wrong for him to have represented them with respect to presenting their case or drawing papers for them?

Mr. GLAVIS. Yes, sir; knowing that they were fraudulent.

Mr. VERTREES. Knowing that they were fraudulent. Now, when you mean to say that in that he stated any matter or thing in any way of which he had gotten information while he was connected with the Government in that affidavit?

Mr. GLAVIS. Whether he said it in the affidavit, was that the question?

Mr. VERTREES. Yes; anything of which he had knowledge—was any fact of which he had knowledge that was stated there on file in the department with the Cunningham papers—which knowledge could not have been gotten any other way?

Mr. GLAVIS. I would like to see that affidavit. I have not read it for a long time.

Mr. VERTREES. Do you not know as a fact that the Cunningham journal, on which you all laid so much stress, was not found and filed by you or by the department until he had ceased to be commissioner?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that no report stating any facts whatsoever against the Cunningham claims—detailing any facts—had been made by you at all?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is true, is it—I mean at the time he left office?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. The only affidavits that had been made up to that time were those that Mr. Cunningham and other members of the group themselves had made, taken by special agents of the Government. Is that not true?

Mr. GLAVIS. As to the Green group—

The CHAIRMAN. Just answer that question.

Mr. BRANDEIS. Mr. Vertrees, are you not leading the witness to make a statement that you do not want him to make?

Mr. VERTREES. No; I am trying to get him to make them.

Mr. BRANDEIS. You said he had made no report whatever with reference to the Cunningham group before he went out.

Mr. VERTREES. I do not think I said that. I said no report stating the facts. He had made a report in which he had suggested Mr. Love's political aspirations, which alone perhaps could not be relied on, but he had stated no facts.

Mr. BRANDEIS. Had he not made another suggestion, namely, that contained in the letter of February 27, that I produced at the last hearing?

Mr. VERTREES. I do not recall the letter.

Mr. BRANDEIS. It is a letter of February 27.

The CHAIRMAN. Go on.

Mr. GLAVIS. I should like to make a statement to the committee, if you do not mind, and that is that since what the chairman has stated, I have tried to confine myself to Mr. Vertrees's questions by yes and no answers, but the way he puts it it is absolutely impossible to do it without being misunderstood entirely. I do not see that I can do that.

Mr. JAMES. It has not been required of you to do it. The chairman gave his opinion. He ruled that you might proceed to make your explanations where you thought they were necessary.

Mr. GLAVIS. I do not want to delay the inquiry or anything of that kind, but I do not see how I can do it.

The CHAIRMAN. Go on and make your answer, such as it is.

The last question was read by the reporter, as follows:

Mr. VERTREES. The only affidavits that had been made up to that time were those that Mr. Cunningham and other members of the group themselves had made, taken by special agents of the Government. Is that not true?

Mr. GLAVIS. Yes, sir; I secured some affidavits about March 2 which Mr. Ballinger did not know about then. He knew, however, about them after resigning as commissioner, when he arrived in Seattle I told him about them then.

Mr. VERTREES. You told him, but at the time he was commissioner he knew nothing about them?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Now, is this not true, that at the time he received the only official reports touching the Cunningham group were which had been made by Love and Jones?

Mr. GLAVIS. Yes, sir; and my report of January 22, and the report—a letter that I sent Mr. Schwartz in February some time—that was read in the record, I think.

Mr. VERTREES. Was that not a personal letter to Mr. Schwartz?

Mr. GLAVIS. I do not recall whether it was personal or not, but it was for his information of all that I was doing. I do not recall.

Mr. VERTREES. Is there not another one found on page 644 of the record; look at the letter and I will ask you if it was not addressed to him personally and not officially at all?

Mr. GLAVIS. Yes; that is personal.

Mr. VERTREES. And the thing that you related, even to me personally, is with respect to the work done up in Alaska, is it not?

Mr. GLAVIS. Yes, sir; it was relative to what a field examination might show as to the Cunningham and other cases.

Mr. VERTREES. Is that letter not dated February 27, 1908?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And could that letter possibly have gotten to the office before Mr. Ballinger ceased to be an officer—written in Portland, Oreg., to Mr. Schwartz, at Washington, D. C.?

Mr. GLAVIS. It would just about arrive there. The chance is that he would not have seen it.

Mr. VERTREES. The chances are he would not have seen it?

Mr. GLAVIS. As I stated right above there about this letter, I do not know the date, and I do not think Mr. Ballinger would have seen this letter of February 27.

Mr. VERTREES. Because there would not have been time?

Mr. GLAVIS. It would be just about time; it would not be probable that Mr. Schwartz, as soon as he got it, would take it to Mr. Ballinger.

Mr. VERTREES. Moreover, is it not a personal letter?

Mr. GLAVIS. Well, it is personal in a way, which we were in the habit of writing.

Mr. VERTREES. When you only addressed him officially you did not address him that way, did you?

Mr. GLAVIS. No, sir.

Mr. VERTREES. There is not a single official document in the record addressed "Dear Schwartz," is there—of yours, I mean?

Mr. GLAVIS. No, sir. But this is what I would consider a personal letter.

Mr. VERTREES. That is what I am wanting to know.

Mr. GLAVIS. But it was also to give him official information of what I was getting along.

Mr. VERTREES. What I want to get at is whether or not there was anything to give Mr. Ballinger notice of these things that you mentioned; and if there was, I want to know what it was—any

that he could have gotten while commissioner to have used to the hurt of the Government as an attorney subsequently representing those people.

Mr. GLAVIS. Yes, sir; I will give you those. I will have to take the reports of Special Agent Jones and the reports of Special Agent Love and the affidavit of Special Agent Jones; there are two affidavits of Jones—that Jones took, I mean.

The CHAIRMAN. On what page is that, Mr. Glavis?

Mr. VERTREES. Mason's and Campbell's. He speaks of those affidavits. Do you not know, as a matter of fact, that the office interpreted those as favorable statements to the claimants—those two affidavits?

Mr. GLAVIS. I can only conclude that they did from the action they took.

Mr. VERTREES. Well, you did conclude that they did, did you not?

Senator FLETCHER. I can not see how it is competent for him to testify as what the office concluded about anything. How does he know? What right has he to infer it any more than anyone else? It seems to me that there is a wide range of examination that is utterly incompetent.

Mr. VERTREES. That is true, Mr. Chairman; and if we had definite issue in a court I would recognize the absolute correctness of this suggestion, but the allegation is broad. The witness refused to formulate any charges. He is stating facts in reference and inferences to be drawn, and he has given his inferences throughout many times as to what he believed and thought, and I am trying now to get at the facts, and in the light of his inferences, so that the committee can see his viewpoint—whether or not he correctly interpreted those facts; whether they justify the inference that he drew; whether there has been official misconduct.

Mr. GLAVIS. No, sir; I do not see myself how Mr. Ballinger could have taken the record that was before him and ordered this clear listing in January.

Mr. VERTREES. Well, now, what do you wish to be understood by that answer? You say you do not see how.

Mr. GLAVIS. That I did not see how he could do it.

Mr. VERTREES. What inference would you wish drawn from that, that it was so clear to you that the action was improper, deliberate, and absolutely improper, is that what you want the committee to understand?

Mr. GLAVIS. Yes, sir; I want the committee to understand that I thought Mr. Ballinger would not have taken the action that he did upon the evidence that he had before him if the property was his own. I do not think that such action showed loyalty to his trust or faithfulness to the people.

Mr. OLMSTED. He was not in office at this time, was he?

Mr. GLAVIS. Yes, sir; we are speaking now of his action in January clear listing the Cunningham claims on the reports that he had.

Mr. VERTREES. In other words, on the information that he had at that time, you wish to be understood as saying that in your opinion—on the information that was before him at that time—his action was not such that a man would have taken with reference to his own affairs?

Mr. GLAVIS. Yes, sir; I do not think that it was.

Mr. VERTREES. You think that he was trying to aid some expense of the Government. Is that what you mean?

Mr. GLAVIS. Yes, sir; giving these lands away would aid who were getting them.

Mr. VERTREES. You say giving them away. Had they the \$52,800 for them, exactly what the Government asked?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And paid everything that was to be paid that was concerned?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And did not Mr. Schwartz approve of Mr. Schwartz do the act of clear listing?

Mr. GLAVIS. Yes, sir; but, as I stated the other day, I he did that upon instructions from Mr. Ballinger direct, have known Schwartz a long time, and I do not think he upon the evidence before him that was before Mr. Ballinger office—in so acting, that he would have acted favorably.

Mr. VERTREES. Did it not have to come from Mr. Schwartz Mr. Ballinger?

Mr. GLAVIS. It would have to.

Mr. VERTREES. The evidence?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Was it not he who had to present it and to his attention?

Mr. GLAVIS. I will answer no, because Mr. Schwartz not presented to him or Mr. Ballinger might have called for it.

Mr. VERTREES. And it might have been done.

Mr. GLAVIS. It might have been either way.

Mr. VERTREES. How the matter was transacted you do do you?

Mr. GLAVIS. Not definitely.

Mr. VERTREES. Do you know indefinitely?

Mr. GLAVIS. I know from what the records I have seen.

Mr. VERTREES. I am not now on the question of inference records. I am on the question of what you know your whether the clear listing was done upon the judgment of as well as Mr. Ballinger, or not.

Mr. GRAHAM. Will you please read that last question?

The reporter read as follows:

Mr. VERTREES. How the matter was transacted you do not know, do you?

Mr. GLAVIS. Not definitely.

Mr. VERTREES. Do you know indefinitely?

Mr. GLAVIS. I know from what the records I have seen show.

Mr. GRAHAM. I think that question certainly covers that that was being given it. He made the answer perfectly right but if Mr. Vertrees wishes to withdraw it and ask another of course he has the right to do it, and if it is withdrawn ought to be answered.

The CHAIRMAN. Proceed.

Mr. VERTREES. Well, I will put it again, in a little different Do you know how that clear listing was done; that is, and whose judgment concurred in it?

Mr. GLAVIS. No, sir.

Mr. VERTREES. The official act was done by Mr. Schwartz, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. It comes to this, then, Mr. Glavis, that either Mr. Schwartz did it because he thought it was right, or he did it at the dictation of Mr. Ballinger regardless of whether it was right or wrong?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But whether it was the one way or the other, you do not know—I believe you said that?

Mr. GLAVIS. No, not definitely.

Mr. VERTREES. Do you know whether Mr. Ballinger himself directed and ordered that over any protest of Mr. Schwartz or any objection on the part of Mr. Schwartz?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Was any man in the office—Mr. Schwartz, Mr. Dennett, Mr. Ballinger himself, or anyone else—there at that time who stated upon the record that they had approved of it or thought that it was improper?

Mr. GLAVIS. No, sir; I do not know definitely about that.

Mr. VERTREES. Do you not know that when Mr. Schwartz did order the clear listing he specially directed you to be notified that it had been done?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And is it not also true that when you thought upon the letter which you received that you immediately notified him that it ought not to be done and that he immediately recalled it?

Mr. GLAVIS. Yes, sir. I do not know whether I immediately notified him when I opened that letter or not, but it was within that period that I notified him.

Mr. VERTREES. It was on the 22d that you did it, and your telegram was received on the 23d, and on that very same day he recalled it. To your knowledge has there ever been any effort made by Secretary Ballinger or Mr. Dennett, or any other official, to induce Mr. Schwartz to change that order of recall?

Mr. GLAVIS. No, sir; I do not know of any.

Mr. VERTREES. I will go now to the Green group that you speak of, Mr. Glavis. What was the thing with reference to the Green group that Mr. Ballinger did while he was a private citizen which you object to and think was improper?

The CHAIRMAN. Be kind enough to repeat that question.

The stenographer read the question, as follows:

Mr. VERTREES. I will go now to the Green group that you speak of, Mr. Glavis. What was the thing with reference to the Green group that Mr. Ballinger did while he was a private citizen which you object to and think was improper?

Mr. GLAVIS. Allowing himself to be retained as attorney for some of the claimants in the Green group after, as commissioner, having had knowledge of the Government's side of the case as it had progressed at that time, which I believe to be a violation of that statute.

Mr. VERTREES. Does his action with respect to the Green group have anything to do touching the matter of prosecuting a claim before the Government? Or, if you do not understand my question, what I am getting at, Mr. Glavis, is this: Is not that which he did for certain members of the Green group, with respect to articles of

incorporation, or rather the creation of articles of incorporation after they had already incorporated the company—that is, what else?

Mr. GLAVIS. Yes, sir. He told me that he was preparing articles of incorporation, and that action required some action before the Land Office, and it had to do with the securing of the lands from the Government for those lands.

Mr. VERTREES. Of course, the company had to get its articles of incorporation; but isn't this true, Mr. Glavis, and did Mr. Ballinger tell you, that the thing which he did was this, that the Green group had already taken out, somewhere, articles of incorporation and some question had come up with respect to the charter, and they consulted him as to its validity, and that he advised that a new charter was necessary, and did aid them in getting out a second charter, and that they would give him some consideration of that company as compensation for his work in that respect? Is that not the truth of the matter?

Mr. GLAVIS. No, sir; that is not. The first information I had was that Mr. Ballinger had stock in the Green group of claims, and it was the first articles of incorporation that he was preparing. They had only a month or two months after he had resigned that he began preparing them—

Mr. VERTREES. What I wish your mind directed to is the connection between something to prosecute claims here and the Government to get the title and doing something for them with respect to their organization as a company?

Senator FLETCHER. Let me ask a question right there—state that Mr. Ballinger owned stock in the company?

Mr. GLAVIS. That is what I understand Mr. Vertrees to say that is the first information I had.

Mr. JAMES. Mr. Vertrees asked him if he didn't accept payment of his fees.

Mr. VERTREES. I am informed I am in error about that. It does not mean as to taking stock in the company for preparing articles of incorporation or something of that sort. I just happened to mention the wrong company in the multitude of names. I am sure that was a railroad company, and I had it mixed up with another company.

The point I want your mind on is this: Whether or not you say he was performing had any relation to the preparing of claims before the Government at all or the department?

Mr. GLAVIS. Yes, sir; his action did have.

Mr. VERTREES. Now, what was his action?

Mr. GLAVIS. His action was preparing articles of incorporation and preparing the claims to come under and securing title under act of May 28, 1908, as I understood.

Mr. VERTREES. You say he prepared articles of incorporation and prepared claims. Are these two distinct things?

Mr. GLAVIS. Well, the claims had to be brought in under the company.

Mr. VERTREES. Not necessarily. They can be got in by hand, can they not, absolutely by individuals, to the extent of acres?

Mr. GLAVIS. That is what I meant; under the act of May 28, 1908. They were supposed to be bona fide individual claims taken out for the sole use and benefit of the claimants themselves, and in the act of May 28 it allowed such claims to consolidate and come under a company.

Mr. VERTREES. Sure. But I am speaking now of the professional action of Secretary Ballinger. Was it not with respect to the organization of the company?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Not Secretary Ballinger, but Mr. Ballinger. He was then a private citizen?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And not with respect to the acquisition of the title from the Government, but as to their union into this company, was not that what he was called upon to do?

Mr. GLAVIS. That act is the act they had in mind; it was the act and in accordance with the amendment of May 28.

Mr. VERTREES. Yes; but what I wish to get at is that while that is true it meant that 16 individuals or less who had gotten their land separately could combine and form a company, could they not?

Mr. GLAVIS. Yes; they can do that.

Mr. VERTREES. They can do that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And the action be of that character?

Mr. GLAVIS. Yes, sir. Then he also attended to the assignment of a claim in the Green group.

Mr. VERTREES. What was that?

Mr. GLAVIS. Or purchase of it. That was that claim that he purchased for Congressman Kinkaid and attended to the transfer of that land.

Mr. VERTREES. That is to say, there was a transfer or an assignment. Assignments were allowable by law, were they not?

Mr. GLAVIS. Yes, sir; and then he brought that claim in under one of the companies.

Mr. VERTREES. Yes; but it was in the preparation of that matter of the assignments that he helped Mr. Kinkaid, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what else? Did you not say something about a wharf claim in your testimony somewhere?

Mr. GLAVIS. That is in one of the letters. That letter showed that Mr. Ballinger was handling that. I do not recall that fact.

Mr. VERTREES. Do you recall any other that you say was improper?

Mr. GLAVIS. In acting for claimants?

Mr. VERTREES. Claimants while he was an individual.

Mr. GLAVIS. Yes; he acted on that Hartline group of claims.

The CHAIRMAN. On what?

Mr. GLAVIS. The Hartline group of claims. I think he acted in that group. There was an agreement signed, or an option of an agreement, I think you would call it.

Mr. VERTREES. Now, Mr. Glavis, was not this true, that in what you call the Hartline group there was a man named Hartline interested, and he was to know whether or not certain things could be done under the act of 1908 by persons having coal interests, and he

applied to Mr. Ballinger, as an attorney, for an opinion as to the interpretation and construction, and that Mr. Ballinger gave an opinion, in writing, as to what the act meant, as to whether that contract was good or valid under that act?

Mr. GLAVIS. You mean to say that he was retained by Mr. Har

Mr. VERTREES. Somebody—Hartline, we will say, to get an opinion with respect to that question.

Mr. GLAVIS. My recollection of the facts was that Harriman and Hartline could not agree as to whether that agreement was binding and would make it necessary for Hartline to live up to the provisions in it, and that they went to Mr. Ballinger more as an arbitrator to settle two difficulties rather than acting for one person.

Mr. VERTREES. Let us take that phase of it. Then, as I understand you, your recollection of the transaction is that two persons had a difference as to their rights, and wanted Mr. Ballinger as an arbitrator to determine their rights as between themselves, under the contract which they had, and he was called on to interpret that contract.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that is the transaction you refer to there?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, is there another professional act of Mr. Ballinger, while he was a private citizen practicing law, that you refer to?

Mr. GLAVIS. I do not recollect any right now.

Mr. VERTREES. Now, your objection to that was the impropriety of his action because you have stated there was a law forbidding a public officer to represent claimants?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. What information was there on file at the time he ceased to be commissioner with respect to the Green group, which we have spoken of, and the Hartline group, on file at that time, March 1908, Mr. Glavis?

Mr. GLAVIS. In the Green group there were—

Mr. VERTREES. What page are you referring to?

Mr. GLAVIS. I will have to find it now.

Mr. VERTREES. It is the Jones report, is it not?

Mr. GLAVIS. Yes, sir; there is a report of Jones dated August 10, 1907, and August 13; and in the August 10 report Jones had secured seven affidavits. Now, could you refer to those affidavits?

Mr. VERTREES. I do not know whether they are printed or not. Mr. Glavis. I can get them if they are not.

Do you know whether or not any report in those cases had ever been brought to Mr. Ballinger's attention, Mr. Glavis, while he was commissioner—do you know that?

Mr. GLAVIS. Yes, sir; as I recall Jones handed those reports personally to Mr. Ballinger, or had handed the August 10, 1907, report to him.

Mr. VERTREES. You mean you were present in person?

Mr. GLAVIS. No, sir.

Mr. VERTREES. That is your information?

Mr. GLAVIS. Yes, sir; that is what Jones told me.

Mr. VERTREES. Mr. Jones told you that?

Mr. GLAVIS. Yes, sir; as I recall it. I think he stated that to me, in that report to me of December 2.

Mr. VERTREES. Is not that report dated Seattle, August 10, 1907, and addressed to the commissioner at Washington, District of Columbia?

Mr. GLAVIS. Yes, sir. Mr. Ballinger was in Seattle at that time.

Mr. VERTREES. Were you there?

Mr. GLAVIS. August 10th?

Mr. VERTREES. Yes.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Then you mean that some one had told you that Mr. Ballinger was up there at that time?

Mr. GLAVIS. Yes, sir; Mr. Jones reported that.

Mr. VERTREES. Why would he address it to him at Washington if that was so?

Mr. GLAVIS. That would be the proper heading to give an official communication.

Mr. VERTREES. Just because it should be addressed to him at Washington, even though it was delivered to him at Seattle?

Mr. GLAVIS. The copy was; I do not know whether the original was.

Mr. VERTREES. Would it not be proper to address it to him officially at the place where he was, wherever it might be?

Mr. GLAVIS. No, sir. If I was addressing a communication like that, and Mr. Ballinger wanted a copy of it, as I recall that is what Mr. Jones gave him, I would address it officially and then give Mr. Ballinger personally a copy of it.

Mr. VERTREES. Now, we understand it was a copy, and not the original?

Mr. GLAVIS. Either a copy or the original would be the same. What I mean by a copy, would be a signed carbon copy.

Mr. VERTREES. Now, coming back, then, to the rule that you say this was improper because there was a law against it, is it not a fact that while one Attorney-General has said the statute did relate to claims in the Land Office—

The CHAIRMAN. You mean one Secretary of the Interior?

Mr. VERTREES. One Secretary of the Interior. That the opinion of the Attorney-General and several other officers have been to the effect that it was not; that the statute had no relation to that sort of claims? And to bring it especially to your attention, are those cases not set out, some of them at page 802 of Senate document, in the opinion of Attorney-General Wickersham?

Mr. JAMES. Mr. Chairman, those things are all in the record, and I would suggest that the witness, not being a lawyer, perhaps it would be better to leave that to the committee as to what those decisions really show.

Mr. VERTREES. Mr. Chairman, the witness assumed on his original examination to set forth the statute which he said forbade it; then I have another letter from Mr. Glavis to the Commissioner, dated June 28, 1908, which speaks about better results would be had if all investigations were made by special agents of the General Land Office, because Forest Service officers have no idea of the value of evidence and lack diplomacy in securing same. I thought under

those two statements that I had the right to assume that as he had criticised that statute, that it was my right to inquire his impression of the interpretation which the statute received by the highest law officer of the Government.

Mr. JAMES. But those decisions are in the record, and any conclusion he might draw from them would not be binding, because he is not a lawyer, and it would not be binding in a great many instances if he was a lawyer.

Mr. VERTREES. Well, the charge has been predicated largely upon that statute.

Mr. JAMES. I have no objection—

Mr. BRANDEIS. No, it is not, Mr. Vertrees; it is predicated on the general professional conduct.

Mr. JAMES. I say I have no objection to that.

Mr. OLMSTED. We have the views of the Attorney-General and we have the views of the witness; there is no use of examining him any further on that.

Mr. DENBY. All that is a matter that the committee can take judicial notice of.

Mr. VERTREES. But, at any rate, those acts referred to were acts of Mr. Ballinger while he was a private citizen and not while he was Secretary of the Interior nor while he was commissioner?

Mr. GLAVIS. No, sir.

Mr. VERTREES. That is correct, is it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, you also referred to a matter that was brought out in Watson Allen's statement in that litigation, did you not, between the Allens and Wilsons—between the Wilsons and Allens—or rather a transaction between the Wilsons and Allens, Mr. Glavis?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you were asked whether or not you had seen the deposition of old man Watson Allen or either of the Wilson ladies with reference to that matter, and I understood you to say that you had not, but the statement which you had made to the committee was predicated upon a statement that you heard him make, which was dictated and written out—didn't you state that?

Mr. GLAVIS. Yes, sir; but I don't know that I said solely that, because I had the other facts in connection with the Wilson coal cases in mind all the time; but it was largely upon that statement that Mr. Watson Allen wrote out.

Mr. VERTREES. What became of that statement, Mr. Glavis?

Mr. GLAVIS. Why, the United States attorney had one copy of it, and the other copy I had.

Mr. VERTREES. I here hand you a statement, dated March 30, 1907, and ask you if that is the statement?

Mr. GLAVIS. Yes, sir; that looks like one of the copies.

Mr. VERTREES. Well, that is the statement on which you predicated your evidence, that there was an escrow agreement drawn by Mr. Ballinger at the time, covering four locations that were held under an agreement.

The CHAIRMAN. Is that a copy or the original? You had better identify that.

Mr. GLAVIS. It is a copy, I think.

The CHAIRMAN. You had better identify it, if you will refer to it afterwards.

Mr. GRAHAM. Would you like to have it marked by the stenographer?

The CHAIRMAN. Yes.

Mr. VERTREES. We wish to offer it in evidence.

The CHAIRMAN. I think we have Exhibit "A," and you may call that Exhibit "B."

(Paper referred to is marked "Exhibit B.")

Mr. GRAHAM. When you say it is a copy, do you mean it is one of a number of carbons made at the same time, or is it a copy from one of those.

Mr. VERTREES. Mr. Glavis, does it not look like an original statement?

Mr. GLAVIS. I can not answer both questions. Which shall I answer?

Mr. GRAHAM. My question was the first in order of time; answer it, and then we will call your attention to the other question.

Mr. GLAVIS. I think it is a carbon copy of the original. Yes; I think it is an original carbon copy made at the time the original was made.

Mr. GRAHAM. That answers both questions.

Mr. VERTREES. That is the paper on which you predicated your statement, is it not?

Mr. GLAVIS. In part; yes, sir.

Mr. VERTREES. Is there anything else that your statement was predicated upon?

Mr. GLAVIS. Yes; upon the information that the investigation disclosed about that time.

Mr. VERTREES. What do you mean by that, Mr. Glavis?

Mr. GLAVIS. Well, Watson Allen made this statement, that same afternoon, I think it was. Mr. Hoyt and I went over to Mr. Ballinger's law office and we saw one of his partners, one of Mr. Ballinger's partners, and the man we saw was the man Mr. Watson Allen telephoned to; I think that was Mr. Ronald or Mr. Battle—now, I am not sure which one it was—and we had a conversation with him about it, because we wanted to get the escrow agreement. And then afterwards, or prior to that time, I had seen some deeds prepared by—the deeds that Mr. Watson Allen referred to were witnessed by Mr. Ballinger—and then the information I also had was the statement of the case of Mr. P. C. Richardson telling about the connection that the Ballinger law firm had with the entire case.

Mr. VERTREES. In other words, you mean that Mr. Richardson made some statement to you which you have not given us, and on that you base your opinion? You have given your statement of a fact made by those lawyers when you were not there at all?

Mr. GRAHAM. What about the first question, now? I think he has told us about Richardson's statements. Please read the first question of those two.

(The stenographer reads the first question, as follows:)

In other words, you mean that Mr. Richardson made some statement to you which you have not given us, and on that you base your opinion?

The CHAIRMAN. Did you answer that question?

Mr. GLAVIS. Read the question.

(The stenographer again read the question, as follows)

In other words, you mean that Mr. Richardson made some statement which you have not given us, and on that you base your opinion?

Mr. GRAHAM. It may have been abandoned; it was afterwards followed by another without interruption.

The CHAIRMAN. Have you any answer to make to it?

Mr. GLAVIS. Read it again. I was thinking about it above there; that it might have covered it.

(The stenographer read the question, as follows:)

In other words, you mean that Mr. Richardson made some statement which you have not given us, and on that you base your opinion?

Mr. GLAVIS. No, sir; I do not base my opinion on that statement that Mr. Richardson gave me, but upon all the evidence I had of the case.

Mr. VERTREES. What I am endeavoring to get at is your opinion of the case. Is it not true, Mr. Glavis, that what you have said to Mr. Richardson was what Richardson told you of the names of attorneys from the record?

Mr. GLAVIS. He told me that, yes; but he also told me that Wilson coal cases—his connection with them; he has told me a number of times.

Mr. VERTREES. But what you know about it is the fact that you? You, yourself, had no knowledge in any way?

Mr. GLAVIS. Yes, sir; I had knowledge in this way that I secured some other affidavits in the case from other parties. I recall this. Also I had seen all the record evidence that Mr. Richardson had. He had the minutes of the Sterling Coal Company, and a whole lot of documentary evidence that gave me knowledge of the case.

Mr. VERTREES. I am not inquiring about that. I want to direct your mind to this action of Mr. Ballinger as attending to the agreement between Mr. Allen and the Wilsons. Two deeds were held in escrow, and a note; you have said that the agreement drawn up at that time—I understood you to say that before—with reference to four other claims that had been made. You have admitted that the deeds—that the land to which they related had been entered and were properly assignable.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But as I understood you originally, you said that there was then drawn up an agreement as to the claims that were not, to combine them in violation of law, that Mr. Ballinger had drawn up such an agreement, which was held in escrow.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That is what I understood you to say.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, what I want to get at is whether you have any knowledge of that, or was that what somebody had told you?

Mr. GLAVIS. Oh, my knowledge of that case was given me by somebody had told me; yes, sir.

Mr. VERTREES. Did you not state further to this commission than once, in your direct examination, that your knowledge was based on this statement that was taken of old mine?

had been dictated and could not be found—did you not tell them that more than once heretofore?

Mr. GLAVIS. I do not think I did. I did not intend to have it solely rest upon what was contained in this dictation. It was my general knowledge anyway, because I remember this, that when the stenographer prepared those statements he did not get it to cover a lot of statements, some of which would have been very material to the case—that he did not get it all—that he did not read his notes very well.

Mr. VERTREES. Now, did you not say on page 5 of this investigation, in answer to a question of the chairman—

According to the testimony of Mr. Watson Allen, Mr. Allen went to him and asked his advice concerning this matter, and he drew this escrow agreement and prepared the deeds, the deeds to be delivered and—

and then you were interrupted. Then you used the word “testimony” and you say—

According to the testimony of Mr. Watson Allen, Mr. Allen went to him and asked his advice.

What did you mean by “testimony” there?

Mr. GLAVIS. The statement he made to Mr. Hoyt, and what I thought he afterwards made when he gave his testimony in the trial of the Wilson coal cases.

Mr. VERTREES. Did you not speak, in the answer just above that, as to the testimony of Watson Allen, this—

The CHAIRMAN. Those are suits brought to set aside the patents, are they not?

Mr. GLAVIS. I do not see that.

Mr. VERTREES. At the top of the page [reading]:

Mr. GLAVIS. Yes, sir. In the testimony of Watson Allen you will find the name of his attorney left out. That was by stipulation. Mr. Ballinger's name does not appear; it is only by his attorney. I merely give that explanation, in order that in examining that testimony—

The CHAIRMAN. Did he appear in court in those cases?

Mr. GLAVIS. No, sir; he did not appear in court at all. He was never consulted.

The CHAIRMAN. What connection, if any, did he have with the cases?

Mr. GLAVIS. According to the testimony of Mr. Watson Allen, Mr. Allen went to him and asked his advice concerning this matter.

Now, did you not say there, and did you not mean for the committee to understand, that in his testimony in that case Watson Allen had made that statement?

Mr. GLAVIS. No. I thought he had, and from the information I have he did; he made that statement to Mr. Hoyt and myself, and that was what I had in mind because I did not hear him make the statement in court, and neither have I ever read his testimony given in court. But he made that statement to Mr. Hoyt and myself.

The CHAIRMAN. Then, Mr. Glavis, I call your attention to your answer on the top of page 5. What you state there is this:

In the testimony of Watson Allen you will find the name of his attorney left out.

That is not true, then, if you do not know anything about that.

Mr. GLAVIS. I explained the source of my information later on when I said that I had not read Watson Allen's testimony, and that information was gained by me from one P. C. Richardson.

The CHAIRMAN. Then you do not know whether that appears in the testimony in the case or not, do you?

Mr. GLAVIS. No, sir. Not from my own personal knowledge.

Mr. VERTREES. What did you mean by this answer on p
Mr. Glavis?

Mr. BRANDEIS. Is there any other paper relating to this transaction in which
linger's name does appear as the counsel through whom the transaction was
and with whom the deeds were left in escrow?

Mr. GLAVIS. Yes, sir; when Mr. Hoyt and I examined Watson Allen I
over a stenographer to Mr. Hoyt's office and we took down his statement—

The CHAIRMAN. What page is that on?

Mr. VERTREES. Page 7, about a third of the way down [re
questions and answers, and that was afterwards written up. That stateme
the United States attorney's office.

The CHAIRMAN. Was that signed by Mr. Allen?

Mr. GLAVIS. No, sir; it was dictated. It was just taken down. It was no
at that time. In fact, it was never signed, but in his testimony before the
before whom this testimony was taken, Ballinger's name was given, but it
written up by stipulation and consent of counsel.

Now, do you not there in your answer, clearly distinguish be
the statement which you say you had a stenographer to mak
the testimony of Watson Allen that was given before the refer

Mr. GLAVIS. Yes, sir; as to his name appearing in one, and
his name not appearing in the other.

Mr. VERTREES. And you say it was left out of the other
posely and intentionally? It was not written up by stipulatio
consent of counsel?

Mr. GLAVIS. I have stated the source of my information als
that.

Mr. VERTREES. Where do you see that?

Mr. GLAVIS. I remember having made it.

Mr. VERTREES. Did you state it until we came to your
examination?

Mr. GLAVIS. I think I stated it on my direct examination.

Mr. VERTREES. On page 474—isn't that the first time you
the statement that you do not know anything about that?

Mr. GLAVIS. Four hundred and seventy-four?

Mr. VERTREES. Yes; 474-475.

Mr. GLAVIS. I remember saying it there, but I thought I sa
my direct examination. I would like to look in here and see.

Mr. VERTREES. Are you looking now in your direct exami
to find whether you told then?

Mr. GRAHAM. Look at the bottom of page 8 of the record [re

Senator SUTHERLAND. Was it a written stipulation?

Mr. GLAVIS. I do not know as to that. I am not sure.

Senator SUTHERLAND. Did you hear the stipulation made?

Mr. GLAVIS. No, sir; it was not made when I was there.

Senator SUTHERLAND. How did you know that it was made?

Mr. GLAVIS. I know it from having talked about it.

Senator SUTHERLAND. With whom?

Mr. GLAVIS. I talked with P. C. Richardson; he was one of our witnesses and
there all the time. He was the person who told me about it.

Mr. VERTREES. Look at page 474 of your cross-exami
about the middle of the page [reading]:

Mr. VERTREES. Or that he knew anything about it, or had ever heard of it.

Mr. GLAVIS. No, sir. In testifying about it, I merely wanted, as I th
had been omitted from the Watson Allen testimony in the record—his na
mentioned in this statement which Mr. Hoyt and I secured—I wanted to
attention of the committee to it before they secured the record and found
crepancy existing. That was my object in calling it to their attention.

Now, it comes to this, does it not, Mr. Glavis, that so far as the omission which you have spoken of, of Mr. Ballinger's name from the record after it had been given, and then its intentional omission or suppression by stipulation—all you know about that is what some one told you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Have you not examined the record or a copy thereof since?

Mr. GLAVIS. Of the Alaska Coal Company case?

Mr. VERTREES. Yes.

Mr. GLAVIS. No, sir; I haven't seen it since.

Mr. BRANDEIS. We have called for that; it was one of the first papers that we called for on the 27th of January, but we have not had an opportunity to—

The CHAIRMAN. I will call the attention of the committee that that related to the decisions supposed to be made by Judge Hanford, as quoted in the papers. I wrote to him for a copy of the decision and the deposition, and when we came to find out it was by another judge and another court, and he referred our letter to that other court, and we have got the opinion of the court and we have sent for the deposition. The delay occurred because we got the wrong court and the wrong judge.

Mr. BRANDEIS. I think, Mr. Chairman, that my request was not for a copy of the opinion, but it was for this statement which Mr. Vertrees is now presenting.

The CHAIRMAN. Yes; and we all supposed —

Mr. BRANDEIS. Referring to the disposition of the Alaska lands.

The CHAIRMAN. But we supposed the case was a case before Judge Hanford; that was the information that the newspapers gave us, and I addressed our application to them; hence the delay. It has turned out that it was before another judge.

Mr. BRANDEIS. But that was it.

Mr. JAMES. We got hold of the wrong court.

The CHAIRMAN. That occasioned the delay.

Mr. VERTREES. In point of fact, does not Mr. Ballinger's name appear no less than nine or ten times in the depositions of Mr. Allen and the two Wilson women in that record, and in point of fact was so expressed?

Mr. BRANDEIS. Have you a copy of that record?

Mr. VERTREES. Yes.

Mr. BRANDEIS. I thought it would have been produced here long ago because we have been trying to get it, and the chairman has just stated the reason that it has not been produced.

Mr. OLMSTED. You could have gotten it for yourself as well as anyone else, if it is a public court record.

Mr. BRANDEIS. Whether I could or not, I was asked to state what I wanted, and I did state on the 27th of January, and the chairman took great trouble to get what we wanted for us. He went himself to the Secretary of the Interior's office to make the request for those papers. It appears that these papers are—

Mr. OLMSTED. Are those the records of the Interior Department, all of the same lot?

Mr. BRANDEIS. I don't know whether they were.

Mr. OLMSTED. Well, the depositions in a court—

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Mr. BRANDEIS. Are not always in the court, as you y know.

Mr. OLMSTED. That is where I should look for them.

Mr. BRANDEIS. I will say, as a matter of fact, to satisfy tion, that we immediately telegraphed out to try to get copies, that we immediately telegraphed out to try to get copies have not been able to get them. Now, why, I do not know.

Mr. GRAHAM. To whom did you telegraph?

Mr. BRANDEIS. To one of the counsel out there who are responsible in some matters—that is, not the court—and he was unable to get them. Now, I do not know why and I make no suggestion, merely call attention to the fact that this very document Mr. Vertrees is examining this witness about is the document I have requested should be produced. I do not know why it was produced for him and not for me.

Senator FLINT. I do not think that is a fair statement. reflection upon this committee.

Mr. BRANDEIS. I beg your pardon.

Senator FLINT. The chairman has stated to you that in upon receiving your request he wired out to the judge for the papers but was unable to get them; that he received a reply that he made a mistake, that he had addressed the wrong judge, and referred to the proper judge. Now, I think that is a full and fair statement of the matter.

Mr. BRANDEIS. Absolutely.

Senator FLINT. We have done everything on our part to get the papers that were asked for. Now, Mr. Vertrees, in cross-examination the witness, has referred to this document, and he states that the document is in his possession. It seems that both you and Mr. Vertrees have asked for these documents, as will appear from your testimony to this committee. Now, we have no control over that court; they should send it to you first or Mr. Vertrees first, or the documents should turn over to you papers in his possession any papers in your possession should be turned over to him. when you make a statement like the one you have just made, reflect upon the committee.

Mr. BRANDEIS. I think you must not have heard the statement made in the start. I said that this committee had used every effort to get these papers, and I referred to the fact that the chairman had the trouble to go and attend to the matter himself after the request immediately after the request to the committee had been made. what I say is that with this request upon the record, it is not that these papers are in the possession of counsel on the part of the committee.

The CHAIRMAN. Mr. Brandeis, let us come to a practical question. You understand, now, that Mr. Vertrees has this record in his possession.

Mr. BRANDEIS. Yes, sir.

The CHAIRMAN. Well, now, if that is true, would it not be the matter if you two counsel can agree upon the fact that the record is in his possession, and if it is the record what is the necessity for sending for another copy?

Mr. BRANDEIS. It needs no agreement. If Mr. Vertrees has the record I am perfectly content to accept his statement.

The CHAIRMAN. Why can not we accept this, and not send for another copy? If we have one copy of that record, what is the necessity of waiting to get another copy? I simply suggest that to

Mr. VERTREES. The intimation that I have that original record and have not produced it I just here now want to contradict and to denounce as flatly as in this presence I can, so far as that is concerned. Now, what happened with reference to this is this: It being stated that there were erasures, by stipulation, erasures in the original record, my thought was that that original record ought to be brought here, and I made application to the Attorney-General to use his power to see if we could get the original record sent down to the committee. It has not come, so far as I know; I was informed that it probably would be, but that there was some question on account of not knowing whether the parties were going to appeal, or something of that sort. I did not mean to state—what I have is what purports to be a copy, but is not certified, but Mr. Finney informs me it was brought here when he came by Mr. Battle, formerly Mr. Ballinger's attorney. Now, that I have, or rather have seen; I haven't got that. But it is not certified at all.

The CHAIRMAN. You have called for the original record?

Mr. VERTREES. Yes, sir; and I have supposed it would be here all the time, and would speak for itself, because, as you very well know, if it were true that there were interlineations or errors in the record, if a clerk certified it he would certify them. Under the circumstances we thought the original ought to be here. That was based, I may say, however—it is not proper for me to say that—I was going to say upon information I had from Mr. Hoyt, as the whole thing came about. But perhaps it would not be proper for me to say what Mr. Hoyt would say now, because he is here and will testify for himself. But as to this record, I can produce this uncertified copy which was brought to us in this way.

Mr. JAMES. I think the misunderstanding between you and Mr. Brandeis arose by his asking if you had the record there, and I think you misunderstood him and said—if the question was read, I think it will disclose that you said you had it here. But you were referring to a copy and he was referring to the record.

Mr. BRANDEIS. Yes, sir.

Mr. JAMES. That seems to be the trouble.

Mr. BRANDEIS. Precisely.

Mr. VERTREES. I have seen it, and I am informed that Mr. Battle offered it in evidence—

The CHAIRMAN. I understand now you are cross-examining the witness as to this record?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. And simply laying the foundation for afterwards introducing the original record?

Mr. VERTREES. Yes, sir.

Senator ROOT. May I make a suggestion?

The CHAIRMAN. Yes, sir.

Senator ROOT. I suppose that it is competent for the committee to secure the production of the original record by issuing a subpoena duces tecum to the circuit court, and as there has been so much trouble about this, I think we had better do that. I therefore move that unless it appears to the chairman that that record will presently be produced, a subpoena duces tecum issue to the court for the production of the record.

The CHAIRMAN. I will say that we have simply called for a copy of the record on the clerk of the court. We really called for the original record.

Senator ROOT. I think that motion had better be made.

The CHAIRMAN. You have heard the motion?

(Thereupon the motion was agreed to.)

The CHAIRMAN. And the subpoena will be issued.

Mr. VERTREES. Now, Mr. Glavis, you were there when evidence was taken, were you not?

Mr. GLAVIS. No, sir; I was only there a very small part of when the evidence was taken.

Mr. VERTREES. Well, you were in and out when it was taken.

Mr. GLAVIS. No; I was not even in Seattle when a good deal of evidence was taken.

Mr. VERTREES. I speak of the testimony of Mr. Watson and the two Wilson women.

Mr. GLAVIS. I do not think I was there at all when Watson testified.

Mr. VERTREES. Well, do you wish to be understood—

Mr. GLAVIS. I would like to finish the answer. I want to be understood at this moment. I think I was there only when one of the Wilson women testified, as I remember it.

Mr. VERTREES. You heard her testify, did you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you may have heard the others?

Mr. GLAVIS. Oh, no; I am pretty sure that I did not hear the others.

Mr. VERTREES. Which one of the Wilson women did you hear testify?

Mr. GLAVIS. I couldn't tell you that.

Mr. VERTREES. Now, in referring to this matter, do you want the committee to understand that the elimination of the name of Hoyt from that record was in anywise done by his procurement, consent, or knowledge, or anyone by him or for him.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Do you know how it did come to be done?

Mr. GLAVIS. Well, I have heard, since Mr. Hoyt has been here, that you want me to say—

Mr. VERTREES. Yes, I will ask you as to what Mr. Hoyt said when he was counsel representing the Government, was he not?

Mr. GLAVIS. At that time; yes.

Mr. VERTREES. Well, I mean at that time, of course.

Mr. GLAVIS. Why, he said that they had—I can not say that he said that Hoyt now, but I can give you just about what it was. He said that Ballinger was Commissioner of the General Land Office now, and he didn't see any use in having his name brought in, because it would make any difference to our case; which was absolutely true.

The CHAIRMAN. Mr. Glavis, I thought you said that his name was left out by stipulation?

Mr. GLAVIS. That was my information, Mr. Chairman, when he testified.

Mr. BRANDEIS. I think the witness has not answered the question fully, Mr. Chairman.

The CHAIRMAN. Go on.

Mr. GLAVIS. Read the answer.

(The stenographer read the answer:)

Why, he said that they had—I can not quote Mr. Hoyt now, but I can give you just about what it was. He said Mr. Ballinger was Commissioner of the General Land Office now, and he didn't see any use in having his name brought in, because it didn't make any difference to our case, which was absolutely true.

And the other attorney on the other side thought the same way, and they were going to omit it.

Mr. VERTREES. If I understand you, then, basing your statement now upon information derived from Mr. Hoyt, your statement is this: That Mr. Hoyt was there representing the Government, and some other lawyer, whose name you have not given, was representing the defendant, and that during the delivery of the evidence the witnesses mentioned that these deeds were drawn, notes, etc., right in the testimony, in the office of the other attorneys, Ballinger and Battle, and that Mr. Hoyt suggested to the counsel on the other side that, in view of the fact that Mr. Ballinger was now commissioner, a very good way to do that would be just to say "attorneys" and leave out the names; that it would do no good and might be the cause of suspicion by some persons, and that the other man said "very good," and that that was agreed upon—that is the way you understood it from Mr. Hoyt?

Mr. GLAVIS. Yes; that is about as I understand it. I only heard him make that statement once, but I did not pay very particular attention to it at that time. I was in the room at the time, but I didn't follow it very closely.

Mr. VERTREES. Well, now, did you hear him make it to the counsel on the other side?

Mr. GLAVIS. Yes, sir. He said he stated the same thing to you, Mr. Vertrees, the day before.

Mr. VERTREES. You do not understand me. I was not out there.

Mr. GLAVIS. No; but you mean my counsel?

Mr. VERTREES. No, no; counsel in the Allen case. Were you present and heard that?

Senator ROOT. Have you been talking about something Mr. Hoyt had told you here?

Mr. GLAVIS. Yes, sir; that is what Mr. Vertrees asked me about.

Senator ROOT. You have not been talking about something that was said, then, at the time of this case?

Mr. GLAVIS. No, sir; Mr. Vertrees wanted me to state what Mr. Hoyt had said to me since he has been here.

Mr. VERTREES. No; I do not think that is correct.

Mr. GRAHAM. I beg your pardon, Mr. Vertrees, I think the record will show that you stated it that way. I think you were asking him about the conversation with Hoyt here recently.

Mr. VERTREES. Not recently? The word "recently" is not in here.

Mr. GRAHAM. Well, since he came here.

Mr. VERTREES. He said he did not know. He said he had heard Mr. Hoyt, and then, if I remember, I stated that while it would be proper to call for Mr. Hoyt, nevertheless, under the circumstances, I would ask him to state what Mr. Hoyt told him.

Mr. DENBY. It was my impression that the witness was to a conversation had since Mr. Hoyt arrived in Washington time.

Mr. GRAHAM. I do not think there is any doubt about it.

Mr. VERTREES. Read the question, and see just how it is. (The stenographer read the question, as follows:)

If I understand you, then—basing your statement now upon information from Mr. Hoyt—your statement is this: That Mr. Hoyt was there representing the Government, and some other lawyer, whose name you have not given, representing the defendant, and that during the delivery of the evidence the mentioned that these deeds were drawn, notes, etc., right in the testimony office of the other attorneys, Ballinger and Battle, and that Mr. Hoyt supported the counsel on the other side that in view of the fact Mr. Ballinger was now a prisoner, that a very good way to do that would be just to say “attorneys” and the names; that it would do no good and might be the cause of suspicion to persons, and that the other man said very good, and that that was agreed upon is the way you understood it from Mr. Hoyt?

Mr. VERTREES. The witness had in his mind that. Now, you have no knowledge of that from him before he came here, since the investigation began?

Mr. GLAVIS. No, sir; I do not recall any.

Mr. VERTREES. Where did you get your knowledge, then, of the fact that you were able to state it here to the committee, where you were first examined?

Mr. GLAVIS. From Mr. P. C. Richardson.

Mr. VERTREES. So you were stating what Mr. Richardson testified had occurred?

Mr. GLAVIS. Yes, sir; I so stated that when I testified.

Mr. VERTREES. Were you present when Mr. Hoyt and counsel had that conversation that you refer to?

Mr. GLAVIS. No, sir; I do not remember it at all.

Mr. VERTREES. But in making your statement, both then and now, since you have talked with Mr. Hoyt, and then when you did not go to him, do you mean to say, or to intimate, or to have the committee infer that it was done by the direction or procurement of Mr. Ballinger?

Mr. GLAVIS. No, sir; I do not.

Mr. VERTREES. Or that Mr. Ballinger had any knowledge of it ever of it?

Mr. GLAVIS. No, sir; I do not. It was not my purpose in making it in my direct examination.

Mr. VERTREES. Then, what was your purpose in stating it?

Mr. GLAVIS. It was merely because I had this information that Mr. Ballinger had every reason to believe it was so that Mr. Ballinger's name in the testimony taken in the trial of the case was omitted, and therefore, in reading it, the statement that Watson Allen had procured the name Ballinger would not appear in the whole case, and I did not want them to have any misunderstanding when they read the report, so I found his name omitted, and then think I had made a misstatement.

Mr. VERTREES. But my point is, why did you make the statement here to the committee at the outset of that proceeding, as has been done, if you had no knowledge or information whatsoever that Mr. Ballinger had connived at or had it done?

Mr. GRAHAM. I ask for the reading of his last answer, to see if it does not fit this question particularly.

(The stenographer read the answer, as follows:)

It was merely because I had this information, and I had every reason to believe it was so that Mr. Ballinger's name in the testimony taken in the trial of the case was omitted, and, therefore, in reading it, the statement that Watson Allen had procured, the name Ballinger would not appear in the whole case, and I did not want them to have any misunderstanding when they read the record to find his name omitted, and then think I had made a misstatement.

Mr. VERTREES. I submit that that does not answer my question at all.

Mr. JAMES. Read the question.

(The stenographer read the question, as follows:)

But my point is, why did you make the statement here to the committee at the outset of that proceeding, as has been done, if you had no knowledge or information that Mr. Ballinger had connived or had it done?

Then what was your purpose in stating it?

Mr. GLAVIS. Because, as I have stated in my answer right above there, I knew the committee would call for the record in the Wilson Coal Company case, and going over the testimony if they found that Mr. Ballinger's name did not appear, and only "attorney" appeared, which I had every reason to believe would be the case in view of the information I had received from Mr. Richardson, that then the name "Ballinger" or "Ballinger's firm" had been eliminated and "attorney" substituted, I thought that the committee would not be able to understand my testimony if it did not have that explanation.

Mr. VERTREES. A very long interval of time has passed since Mr. Richardson told you this, has it not, before you came before this committee?

Mr. GLAVIS. No; I think the first time that Mr. Richardson told me about it was last summer, or somewhere about June, 1909. I think that was the first time he told me about it.

Mr. VERTREES. Did you make any attempt to verify that information?

Mr. GLAVIS. No, sir; I did not lay any importance upon it.

Mr. VERTREES. As I understand you, he did not tell you that Mr. Ballinger had in any way had it done, did he?

Mr. GLAVIS. No, sir; he did not even intimate that.

Mr. VERTREES. He did not give you any intimation of that sort?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And then without any intimation of that sort and without any attempt to verify the things he did give you, you made the statement here that you made on your original examination?

Mr. GLAVIS. What statement is it that you refer to?

Mr. VERTREES. As to the elimination of his name by stipulation.

Mr. GLAVIS. Yes, sir; and in that I said that it was upon information that had been given me.

Mr. VERTREES. On page 670 of the record, Mr. Glavis, there is a letter written by you to Mr. Shaw, dated July 16, 1909, and at about the middle of that letter you say:

There are many phases to this investigation that are not of record, for obvious reasons. You will probably come to that conclusion after examining my report. It is quite probable that some of the papers will not be turned over to you.

The CHAIRMAN. On what page is that?

Mr. VERTREES. It is on page 670 of the record of t
It is a letter to Mr. Shaw. Perhaps I had better re
that point in order to get the true connection. It is
Wash., July 16, 1909, addressed to Mr. Shaw, of the B
at Washington:

SEATTLE, WASH.

Mr. A. C. SHAW,

United States Forest Service, Washington, D. C.

DEAR MR. SHAW: I wired you to-day in reference to the Alaska
trust that you will be able to secure a continuance in the Cunning
will, no doubt, have called for all my reports and papers in the cas
you have not done so, I would suggest that you call for all the paper
the Alaska coal investigations. There are many phases to this inve
not of record, for obvious reasons. You will probably come to tha
examining my reports. It is quite probable that some of the pa
turned over to you.

The CHAIRMAN. Read the next sentence.

Mr. VERTREES. "However, I have the same and t
very interesting reading to you."

What were those papers that were such interesting
Glavis?

Mr. GLAVIS. The different instructions and telegram
that are in the record here now.

Mr. VERTREES. Those that are in the record here n

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Why would they not probably turn
them to him?

Mr. GLAVIS. Well, I did not think that they would
of it.

Mr. VERTREES. Oh, yes; in other words—

Mr. GLAVIS. And would not want another bureau to

Mr. VERTREES. In other words, to suppress them
them over, that they would reflect on them. Is that

Mr. GLAVIS. Well, that they would not want anot
know that they had taken the action that they did.

Mr. VERTREES. Or, as you have expressed it, they
very proud of them?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Was not the real reason, and the
that you had those papers that you said would not b
yourself?

Mr. GLAVIS. No, sir; they had copies of everything
the originals in my communications with the depart
had copies of everything that they had the originals

Mr. VERTREES. In other words, there were 24 letters
here, about, that were found up at Seattle, that they
were there not?

Mr. GLAVIS. Yes, sir; and I did not have them; I
anything about them at that time. I did not know e
existed on July 16, those letters.

Mr. VERTREES. But at any rate you called on Mr. S
"Call for all the papers," did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you told him at the same time
called for them he would not get them—or some of
probably would not get them, did you not?

Mr. GLAVIS. I said probably they would not: yes, sir.

Mr. VERTREES. And you now give the reason that they would not be proud of them and therefore would not be inclined to turn them over?

Mr. GLAVIS. That is what I thought.

Mr. VERTREES. Did you not tell him in that letter that the reason was that you had them yourself?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Just read it and see if you did not.

Mr. GLAVIS. Do you want me to read it all? It is as follows:

I wired you to-day in reference to the Alaska coal cases, and I trust that you will be able to secure a continuance of the Cunningham group.

You will, no doubt, have called for all my reports and papers in the case before this. If you have not done so, I would suggest that you call for all the papers connected with the Alaska coal investigations. There are many phases to this investigation that are not of record, for obvious reasons. You will probably come to that conclusion after examining my reports. It is quite probable that some of the papers will not be turned over to you. However, I have the same, and they would be very interesting reading to you.

Mr. VERTREES. Do you not tell him there that you have them?

Mr. GLAVIS. Yes, sir; I tell him that I have them; that I would like to explain my letter if it is not clear. In the line before I said "It is quite probable that some of the papers will not be turned over to you;" and if those papers are not turned over to them in Washington I would turn over some papers out there. It would not make good sense if it meant that they would not turn over papers to me which I had.

Senator PURCELL. Do you mean copies—that you had copies?

Mr. GLAVIS. Yes, sir; I had copies of some of them and the Land Office had originals that I had copies of, and I had the originals of what the Land Office had copies of, you see.

Mr. JAMES. Do you mean to say that the Land Office here in Washington had copies of all these letters out there in Seattle?

Mr. GLAVIS. No, sir; the letters that Mr. Vertrees referred to a little while ago were not known to me, or unknown in my office at that time, and I meant the telegram that the Commissioner of the General Land Office had sent me, and letters that they had sent me instructing me of the action in the cases, of which I had the originals. Still the Land Office here keeps a copy of them and I also meant my replies to such communications, of which I had copies, and they would naturally have the originals.

Mr. VERTREES. Do you not tell him you have the letter which you say you have a copy of.

Mr. GLAVIS. No, sir; I did not testify directly to that, but I meant by that that I had copies of some of the originals and others.

Senator ROOT. You mean that they were practically duplicate files and you could not get them here and get them back?

Mr. GLAVIS. Yes, sir; that is what I meant exactly.

Mr. VERTREES. Please look at page 370 of your original examination and see if you did not tell the committee, about the middle of the page, that the first time you took that matter up for the Forest Service was July 16, 1909; and that was the first time you took the matter up with the Forest Service in any way.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. "I never in the past consulted them in and to the Alaska coal cases."

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, is that true, Mr. Glavis?

Mr. GLAVIS. No; as I stated before, I did not call the night or the day before. I think July 14 or 15 I had spoken to Allen he had apparently done nothing, and this was the first time taken it up with the Forest Service here in Washington, D. C.

Mr. VERTREES. Did not you, a few days before, approach Allen?

Mr. GLAVIS. Yes, sir; I so testified here.

Mr. VERTREES. To get him to telegraph the Forestry Service in Washington?

Mr. GLAVIS. Yes, sir; I wanted them to do something, but he did not take the action, so then I had to take action directly with the Forestry Service myself.

Mr. VERTREES. But you went to him to get him to do it, and he have his telegrams in here, that there was something done meantime?

Mr. GLAVIS. No; I do not think he had in the meantime. The first action taken that Mr. Shaw took was when he received the telegram of July 16. That was the trouble, and I wish to make a statement that I would have much preferred it to have come in that manner, to have had Mr. Allen take the action than required me to take it; but he did not do it.

Mr. VERTREES. You have also told us that you were surprised at Shaw's report that he made when he was sent out there to look into the matter.

Mr. GLAVIS. I never made any such statement.

Mr. VERTREES. I do not mean Shaw, I mean Sheridan. See his report.

Mr. GLAVIS. That I was surprised at it?

Mr. VERTREES. Yes; Sheridan's report.

Mr. BRANDEIS. Where is there a reference to that?

Mr. VERTREES. I just do not know at the present, but I think he said so.

Mr. GLAVIS. I would like to see it.

Mr. VERTREES. I will get it later. I see that I have a memorandum, but I am quite sure that you made the statement that when Mr. Sheridan reported as he did that you were surprised at it.

Mr. BRANDEIS. What do you refer to?

Mr. VERTREES. To the report when he was sent out there in 1909; when he went out to examine the evidence that Mr. Allen had and report whether the matter should be postponed or continued and Sheridan reported that it would be advisable to postpone the hearings.

Mr. GLAVIS. I do not recall whether I made such a statement. I was surprised at it, but it did occur to me that it was very commendable in the man to have made that report concurring with my recommendations, because he had this letter giving the official view very strongly against my views on the question, and that caused my surprise, if any.

Mr. VERTREES. We will pass from that, as you do not wish to and will come back to it later. I am sure about that answer.

did complain on March 30, 1908, though, that the entrymen seemed well informed as to what was going on in the office reports, and the like, did you not?

Mr. GLAVIS. On March 30, 1908?

Mr. VERTREES. Yes. It is in that book that you are looking at, at page 58, I think.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, on what did you predicate that statement, Mr. Glavis?

Mr. GLAVIS. Upon the statement that Mr. Moore had made to me.

Mr. VERTREES. On March 6, at Seattle. Now, what was it that Mr. Moore told you.

Mr. GLAVIS. He told me in substance this, that if it had not been for me the Cunningham cases would have been patented if it had not been for my protest. Now they had to tell him—somebody in the General Land Office had to tell him—in order for him to know it; and he also said that that was the only thing against the claims, and spoke in a way to give us every reason to believe that he had seen all the papers in the case. If you want me to I will try to recall just what I did say. I think I tried to quote it once before.

Mr. VERTREES. That is sufficient for the point that I am on. Now you say that he told you that if it had not been for your protest that the lands would have been patented. Is that the substance of it?

Mr. GLAVIS. Of that part of it, yes, sir.

Mr. VERTREES. Is there any other point that ought to be told in connection with this?

Mr. GLAVIS. Yes, sir; the point I stated right above, that he gave Mr. Jones and me every reason to believe that Mr. Ballinger had talked with him about the case and showed him all the papers in the case.

Mr. VERTREES. Now, on January 15, 1908, had not Mr. Love written to the register and receiver at Juneau? Look at page 47 of that document.

Mr. GLAVIS. Mr. Vertrees, that is Mr. Cunningham.

Mr. VERTREES. Well, Mr. Cunningham had written that he had written with reference to a conversation with Governor Moore, or advised with Governor Moore, and in which he says:

I am glad that you sent your office copies on to Washington, for I am advised by Governor Moore that he is assured by the department chief that patents will be issued forthwith upon arrival of plats, unless some reason for withholding change is advanced by Special Field Agent Glavis, which is not expected.

Is that not so?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, on March 17—look at page 57—did not Governor Moore write to the commissioner, that at this same conversation a few days before he had seen you and Mr. Jones down at Seattle, stating it to be a short time ago, and which must therefore be the date you fix of March 6—and found you were again investigating these entries and that their report could not be otherwise than favorable; and does he not conclude:

If there is any failure to comply strictly with Alaska coal-land laws or the federal statutes, or if fraud is charged, the nature of the irregularities or the charge should be made known.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, does that not indicate to your mind that at that time—five days after that—Mr. Moore understood the situation to be a favorable one?

Mr. GLAVIS. Five days after what?

Mr. VERTREES. The conversation with you.

Mr. GLAVIS. Understood what situation?

Mr. VERTREES. The situation as to the claim. If he had not with you on the 6th, just ten days before?

Mr. GLAVIS. Yes, sir; it shows that he thought it should be such a report. It does not state that Mr. Jones or myself told him that there be such a favorable report.

Mr. VERTREES. But I am on the question of the result that was left on his mind, apparently, so far as that letter goes, and that conversation with you in which you say that there was great concern against you, that it was not going to be, and it was your position that was holding it up.

Mr. GLAVIS. I do not understand your question, but, as I understand it, it does not show that Mr. Moore was displeased with the report because I had protested against the entries, nor does it show that I secured any information from Mr. Jones and myself that we were going to definitely make favorable report.

Mr. VERTREES. The point is, does it not show that he, within five days after, labored under the impression that everything was favorable or believed that it would be?

Mr. BRANDEIS. Eleven days after you mean.

Mr. GLAVIS. Eleven days after.

Mr. VERTREES. Now look at Mr. Dennett's reply to that letter on page 58 and state if Mr. Dennett instead of Mr. Ballinger did not reply to that letter advising that the entry is held in the office pending the receipt of a special agent's report, and that as soon as that report is received prompt action will be taken in the matter, of which you will be duly notified.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now go to page 186 of that document and state if there is not another letter from Mr. Moore to Mr. Ballinger, that is, after he became Secretary—and in that does he not state that so far as his knowledge extends every step has been taken up in the direction of competent counsel supplemented by diligent and intelligent effort, to comply with the law in letter and in spirit, and he concludes by asking Mr. Ballinger to give him such information as he can consistently.

Mr. GLAVIS. What date is that—April 9, 1909?

The CHAIRMAN. It is at the bottom of page 186.

Mr. VERTREES. Now, on page 193 of that same document—

The CHAIRMAN. He has not answered yet. What was your question?

Mr. GLAVIS. He says that, in part, in that letter.

Mr. VERTREES. I know that is only part of it, but that is all I am asking you about now. Is there anything else that qualifies that report? If so, state it.

Mr. GLAVIS. In the whole letter?

Mr. VERTREES. Surely, read the whole letter.

Mr. GLAVIS. I would have to read the whole thing. If that is the intent of Mr. Vertrees in asking me in regard to some of those other letters that I have just answered above, I surely would like to qualify all my answers, because some of the statements contained further in the letters that he had asked me about makes that absolutely necessary, and when I read this letter I am going to ask the permission of the committee to go back and so qualify the other statements.

Mr. VERTREES. Before you do that—and you can do so—state to the committee whether there is anything in that letter that qualifies the matter that I endeavored to bring out.

The CHAIRMAN. That question you can answer by reference to this letter.

Senator PURCELL. He may look through these letters between now and our meeting after recess.

Mr. VERTREES. I wanted him to state whether or not I had just cut the thought in part. I did not think I had, and I wanted him to state whether I had or not.

Mr. GLAVIS. I felt that you had in the others and I want to correct my answers. I would also like to read this one first.

The CHAIRMAN. Has the counsel any objection to our taking our recess now, and he may go over these letters in the meantime?

Mr. VERTREES. Not at all, Mr. Chairman.

(At 12.30 p. m. the committee took a recess until 2 p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

LOUIS B. GLAVIS RESUMED THE STAND FOR FURTHER CROSS-EXAMINATION.

Mr. VERTREES. Mr. Glavis, when we adjourned you were at that time examining the letter of April 9, 1909, which appears on page 186 of the list of orders, and you were seeing whether there was anything in it to qualify the paragraph to which I called your attention.

The CHAIRMAN. What page was that?

Mr. VERTREES. One hundred and eighty-six. Did you find anything in any way that qualified what I asked you about?

Mr. GLAVIS. I wish you would read the question above that, the paragraph which Mr. Vertrees read to me before we adjourned.

Mr. VERTREES. I can restate it, if you wish it.

Mr. GLAVIS. I wish you would.

Mr. VERTREES. I asked you if that letter of Governor Moore did not state to Mr. Secretary Ballinger this:

So far as my knowledge extends, every step has been taken under the direction of competent counsel, supplemented by careful and intelligent effort to comply with the law in letter and in spirit.

And if he then did not add also:

Kindly give me such information as you can, consistently.

Now, is there anything there that should be included in that that would qualify what is implied in those two statements as to his knowledge?

Mr. GLAVIS. As to the commissioner's—as to Mr. Ballinger's knowledge?

Mr. VERTREES. No, Mr. Moore's knowledge.

Mr. GLAVIS. Yes; I think probably the information Mr. Moore wanted as shown by this letter, was whether the present Secretary Ballinger, intended to carry out the Roosevelt and policies or whether they intended to change the policy under the former administration had been acting?

Mr. VERTREES. Had not Mr. Roosevelt said that the laws to the Alaska lands were absurd and ought to be changed in accordance with the sage to the Congress.

Mr. GLAVIS. I have never heard this.

Mr. VERTREES. You don't remember that—we had it up the day.

Mr. GLAVIS. Yes; I think I do. But nevertheless they were acting under the law as they found it at that time, as is shown by the statement of Mr. Moore in which he says—

Mr. VERTREES. What relation has that with the matter I wish you to speak of, which was that this letter indicates, or what Mr. Moore means for it to indicate is, that he has no knowledge of anything in the way of the patenting of his claims?

Mr. GLAVIS. Well, I think it is. He says:

Kindly give me such information as you consistently can.

That is, the information he called for in the same paragraph of the letter, not only as to testing the claims, but as to the policy depended entirely, as shown by the letter, upon what the policy would be as to whether they would get the patents.

Mr. VERTREES. I brought it to your attention with the view of having the committee compare that with your statement that Mr. Moore had previously expressed to you a knowledge of your protest question now is not what he wanted to know, but the statement of information at that time—what this letter indicates?

Mr. GLAVIS. Oh, if that is the intent, I would say this refers to the information the Government had secured while Mr. Ballinger was out of office probably.

Mr. VERTREES. That still is not what I wish your mind to go to, Mr. Glavis; my point is to have you say whether or not it shows whether it would be truthful or untruthful—that Mr. Moore meant to say that he did not know there was any other way, and wanted to find out whether there was.

Mr. GLAVIS. Yes; that is, he also said so.

Mr. JAMES. Right there, instead of it referring to that, I think this is not a reference to the situation of that, or is it criticism:

This refers, of course, to the former administration, which, I think, failed to carry out the provisions of the statutes relating to Alaska coal lands in refusing to withdraw the entries made prior to the order of withdrawal. It is hoped and confidently expected that the present one will be distinguished for a fairer interpretation and respect for law.

Now, was this information he wanted relative to what the situation was going to be?

Mr. GLAVIS. That is what I thought.

Mr. JAMES. Or, was it in regard to how the parties stood?

Mr. GLAVIS. That originally was what I thought in giving my answer.

Mr. VERTREES. Is it not plain from the latter part of the letter that he means to inquire as to the status of it [reading]:

You will realize, I think, that any considerable delay will mean the loss of another summer's work in development and another year's delay in getting the coal to the markets on the Pacific coast, where it is badly needed.

Mr. GLAVIS. Yes; but he then says in the other paragraph——
Senator PURCELL. The opening sentence of that letter tells what the purpose of the letter is. It says:

The purpose of this letter is to inquire concerning the status of certain coal-land entries in Kayak district, Alaska, more especially concerning that one made by myself.

Mr. VERTREES. Yes; that is the statement of it.

Now, I will ask you if Mr. Ballinger replied to that letter, or was it replied to by Mr. Dennett, do you know?

Mr. GLAVIS. No, sir; I do not know.

Mr. VERTREES. Look at page 193 of this compilation and see if the matter there was not turned over April 20, 1909, by the Secretary to some one else. Was there not a letter from Mr. Dennett, commissioner, dated April 20, 1909, to Governor Moore, which reads as follows:

APRIL 20, 1909.

HON. MILES C. MOORE,
Walla Walla, Wash.

MY DEAR GOVERNOR: Your letter of the 9th instant to the department asking for the status of coal entries in the Kayak district, Alaska, and more particularly about the entry made by yourself, and now pending, has been referred to me for reply.

The office has, within the current month, received a detailed report from the field as to the status of the various coal entries referred to, and the matters disclosed in said report preclude action on the entries at this time. The further work necessary, by reason of the information now in the possession of the office, will be concluded within the next sixty days, and at that time the record will be in such shape that the entries will be acted upon in this office.

Respectfully,

FRED DENNETT,
Commissioner.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Is not that a reply of the commissioner to that letter of the Secretary?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, before we adjourned the question came up as to whether you had stated that you were surprised at the report of Mr. Sheridan, and you asked me to call your attention to the place where that occurred, and I could not do it at the time; but now I bring it to your attention. It is on page 201 of the record of the evidence, and were you not examined, and did you not answer as follows:

No, sir. I protested against having hearings in the Cunningham cases on July 16, 1909, to the Forest Service. Mr. A. C. Shaw was the law officer of the Forest Service in Washington, D. C.

Mr. GLAVIS. What page is that?

Mr. VERTREES. Two hundred and one of the evidence.

Mr. GLAVIS. Oh, I see; yes, sir.

Mr. VERTREES (reading):

By telegram of July 17 they put Sheridan in charge of the case.

The CHAIRMAN. Was it not that fact that rather alarmed you and made you apply to Mr. Pinchot for assistance to put you in touch with the President?

Mr. GLAVIS. No, sir; there were a great many things that alarmed me beside that. That did not worry me very much.

Now, go to page 249—the bottom of page 248. The chair

But you have stated heretofore that when Sheridan came he and you your opinion about this case—that is, he agreed with you?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. So that he did not take an unfriendly view of the case view from what you did?

Mr. GLAVIS. No, sir. I thought he acted very properly in them; in fact, surprised that he took the view that he did.

Now, why were you surprised, Mr. Glavis?

Mr. GLAVIS. Because he had been sent all the way from to go over the case, and was ordered to proceed immediately the hearings. He also had a letter of instructions from Schwartz—I think it was dated July 22, 1909, something like which practically told him—in fact I think it did tell him the office could not agree with my view, and that they expected to proceed according to the instructions from the office—

Mr. VERTREES. Well—

Mr. BRANDEIS. I do not think the witness has finished his

Mr. VERTREES. I beg your pardon.

Mr. GLAVIS. Yes.

Mr. VERTREES. You had a copy of that letter of instructions you not?

Mr. GLAVIS. Yes; that is the one I gave Mr. Sheridan.

Mr. VERTREES. And you say that was a matter of surprise to this gentleman, against whose character you knew nothing, sent out there by the department to make an investigation of the and report; and you say that was because of a letter of instructions under which he came?

Mr. GLAVIS. No; not under which he came. He came to me when he arrived I received the instructions.

Mr. VERTREES. Oh, well, I am not standing on whether there before the other. He had instructions to act, didn't he?

Mr. GLAVIS. The main surprise was that he was practicing law or when a superior usually tells a person that that is his view of employees think that is the law. That is the surprise I mean.

Mr. VERTREES. What you wish to tell the committee is were surprised he gave a report that agreed with you, because he had been sent out there to give a different one—is that the idea?

Mr. GLAVIS. He was sent out there—it was expected by the department that he would give a different one.

Mr. VERTREES. Who expected it?

Mr. GLAVIS. Why, I think the whole office, I guess; I do not know just who in the office.

Mr. VERTREES. You said it was expected. You surely knew it if you could make that statement.

Mr. GLAVIS. Well, Mr. Schwartz evidently expected it; he gave me that letter.

Mr. VERTREES. That is what I want to get at. Whoever gave you that letter of instructions and sent Sheridan out expected him to go there and make a report that differed from your report?

Mr. GLAVIS. Yes, sir; I do not think they would have expected it unless they did.

Mr. VERTREES. You do not think they would have sent him out there if they did?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now I call your attention to the letter of instructions dated July 21, 1909, on page 251 of the list, and over some distance in it, on page 254, about the top, does not this occur and appear in that letter of instructions under which this agent of the Government, and with respect to whom you have made the statement that you made to this committee:

Every report received from Mr. Glavis in this case concludes with some statement or observation as to what future and further investigation will develop and leaves the report in a status which precludes this office from taking any action; and he has been advised from time to time it is the purpose and intention of this office that there shall be full and complete investigation and advice prior to the final action upon these entries. It is likewise the intention of this office that these proceedings shall come to a close, and that these entries now under investigation for a period of two or three years shall either be canceled or patented. The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries, and has given to them, his best efforts. At the same time the proper and expeditious determination of the field investigations at present devolve primarily upon myself, and I am responsible for the result. It was with this matter in mind that my letter of October 7, 1908, was addressed to him, and that my wire of April 20, 1909, was sent, informing him that the cases should come to conclusion, so far as the investigation was concerned, within sixty days, and that he might call for whatever agents he might require; and he was likewise—and has been—authorized to incur whatever expense may be necessary in these investigations. Notwithstanding the explicit instructions contained in my telegram of April 20, 1909, and the different instructions in reference to the Cunningham case, Mr. Glavis in his letter of July 8, 1909, says that—

"Since the submission of my report of March 23 there has been no evidence secured in this group of entries, for the reason that the time allowed in which to make these investigations has been too short to complete the same," etc.

Notwithstanding Mr. Glavis's statement, the record shows that he had at his disposal the entire field force; and he also had explicit notice that I had pledged the entire field force to the department for a report in these cases at a certain time. He has failed, however, and the report can not be made.

Is not that contained in that letter of instructions?

Mr. GLAVIS. Yes, sir; and there is a further statement.

Mr. VERTREES. I am going to give you something further. Now is not this also contained:

You have been placed in charge of the Cunningham group of Alaska coal cases for the express purpose of properly completing the investigation speedily, and thereafter to conduct the hearings upon which the Government will endeavor to cancel the claims. Enough of the record has been recited to advise you that I expect this result to be accomplished.

Now, so far from telling Mr. Sheridan that he wanted a report different from what you state, now did he not expressly tell him there that, as the record stated, the Government's expectation was justified, and he said to him:

Enough of the record has been recited to advise you that I expect this result to be accomplished?

Mr. GLAVIS. Do you want me to answer that?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir. But he also states in that letter—and this is the part that I have in mind, and the point upon which neither the office nor myself could agree during that period when they wanted me to proceed with the hearing—my report of July 8, 1909, in which Mr. Schwartz says, at the top of page 255 of the list of orders:

I am unable to agree with Mr. Glavis's letter of July 8, that the physical examination of these coal properties in Alaska is necessary prior to the taking of evidence on the question of the good faith and bona fides of the entrymen. He has already been advised that whatever the result of these examinations, there will be opportunity given to get such results in the record in the hearings.

And the other refers to—you don't want me to read the other point. Mr. VERTREES. No; I haven't gotten that far yet. That is a different point. What I want your mind on is, not as to the different views you and Mr. Schwartz took as to the manner in which the evidence should be gathered—I am going to come to that presently, but I am now on the point that you have said to this committee that you expressed surprise that Mr. Sheridan concurred in your view that your plan should be followed. And you said the reason that you expressed that surprise was that this man had been sent out under instructions to make a report different from what you were making. Now, I call your attention to what I have read to you if in point of fact the instructions were not right the other way, and if Mr. Schwartz did not say to him (Mr. Sheridan) that he expected that the Government's desire in the matter of canceling these claims would be accomplished, and that there was already evidence to show that it had a right to expect that?

Mr. GRAHAM. Now, the witness started to express dissent to the proposition contained, and I think it may properly be taken up on that question by way of recital. I think he ought to be allowed to do it. He started in to say no at a certain point.

The CHAIRMAN. He has not answered that question at all.

Mr. GRAHAM. No one could understand that question at all.

The CHAIRMAN. He seems to answer it by reading another paragraph of the letter.

Mr. GLAVIS. Read the question.

Mr. GRAHAM. On that point, Mr. Chairman, I think the relevant part of that paragraph was entirely apropos to the discussion between the witness and Mr. Vertrees.

Mr. GLAVIS. Read the question.

(The stenographer reads the question:)

No, I haven't gotten that far yet. That is on a different point. What I want your mind on is, not as to the different views you and Mr. Schwartz took as to the manner in which the evidence should be gathered—I am going to come to that presently, but I am now on the point that you have said to this committee that you expressed surprise that Mr. Sheridan concurred in your view that your plan should be followed. And you said the reason that you expressed that surprise was that this man had been sent out there under instructions to make a report different from what you were making. Now, I call your attention to what I have read and ask you if in point of fact the instructions were not right the other way, and if Mr. Schwartz did not say to him—the Government did not say to Mr. Sheridan—that he expected that the Government's desire in the matter of canceling these claims would be accomplished, and that there was already evidence to show that it had a right to expect that?

Mr. GLAVIS. No, sir. In the first place I do not think I saw that he had instructions to make—

The CHAIRMAN. That does not answer the question. I want to know what you said; it is what these instructions were. Confine your answer to that.

Mr. GLAVIS. Mr. Chairman, I answered the question by saying that I did not and now I want to explain.

The CHAIRMAN. Oh, that was your explanation?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. You answered it by saying no in the first place.

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. I did not hear your answer.

Mr. GLAVIS. I do not think I said, as the question has been asked, that Mr. Sheridan had any instructions to find out whether or not

ently from what I had found. I do not think I used that language—that his instructions were to find differently from what I had found.

Mr. VERTREES. What did you say, Mr. Glavis?

Mr. GLAVIS. As I recall it, I said that Mr. Sheridan had instructions which would greatly influence him in finding the other way, because it was giving the opinion of the office of what they thought the action ought to be.

Mr. VERTREES. You told the committee that is what you said a while ago.

Mr. GLAVIS. That is, to the best of my recollection.

Mr. VERTREES. Very well.

Mr. GLAVIS. If I said that he was acting under instructions to find differently than I had found, I would like to correct it now.

Mr. VERTREES. Didn't you say to the committee further, when I asked you who they were that were expecting a different report, you finally said you supposed it was the man who wrote it, Mr. Schwartz? Didn't you make that statement?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I ask you if these instructions are not plain and unmistakable to the effect—the part that I have read—that “the Government is endeavoring to cancel the claims. Enough of the record has been recited to advise you that I expect this result to be accomplished.”

The CHAIRMAN. Mr. Glavis, turn to page 254, with the figures 289 in the margin, and you will find the paragraph.

Mr. GLAVIS. Yes, sir; he says this, that “thereafter conduct hearings upon which the Government will endeavor to cancel the claims,”

Mr. VERTREES. It does not say the other thing, too?

Mr. GLAVIS. What other thing?

Mr. VERTREES. “Enough of the record has been recited to advise you that I expect this result to be accomplished.”

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. It seems to me that this whole matter can be cleared up in a few minutes. As I understand it, Mr. Glavis claims that the instructions, or what would amount to instructions, practically to Mr. Sheridan, were to proceed with these hearings without first making a field examination. That is the instructions that he has referred to. That his view was the field examination should be made first, and he was surprised that Mr. Sheridan should find with him on that point. Not as to the merits of the case at all. That is, the sole cause of your surprise was the fact that he found that Mr. Sheridan reported that—page 277, about the middle—

I respectfully recommend that the cases be postponed and hearing not set until such time as Alaska testimony is at hand and ready to be used in the hearing.

Now, that was the cause of your surprise with reference to Mr. Sheridan's report, was it not?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. And the sole cause?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. You were not surprised that he found that there was merit in your contention that the claims ought to be cancelled, and he did not violate any instructions to that effect at all. Consequently the inquiry as to all that matter seems to me to be irrelevant when it is understood what the facts are.

Mr. VERTREES. Did you say that before the question brought to your mind in your present answer, sir?

Mr. GLAVIS. Yes; that was in my mind, and that is

Mr. VERTREES. And you think you said that?

Mr. GLAVIS. That was the cause of my surprise.

Mr. VERTREES. You understand that you made that statement minutes ago, do you?

Mr. GLAVIS. Yes; I think I did, because I read that

Mr. VERTREES. That answers it. You say you

Now, does not he also say in that same letter of page 254:

You are advised now, as Mr. Glavis was advised heretofore, that I will give you whatever assistance, to the extent of the field force and to the extent of the funds you may require. If it is a matter of interviewing further entrymen for a sufficient number of agents to make these interviews at once, however, that Mr. Glavis and his agents have carried this group of cases, but as to that I defer to the opinion of yourself after you shall have had a full record and conferred with Mr. Glavis. In so far as the proper conduct of the Birmingham group of cases may require it, you are authorized to call on me for any personal assistance, including his own services.

I am unable to agree with Mr. Glavis's letter of July 8, that the production of these coal properties in Alaska is necessary prior to the beginning of the evidence on the question of the good faith and bona fides of the entrymen already been advised that, whatever the result of these examinations, the opportunity given to get such results in the record in the hearing

The remainder seems immaterial.

Now, Mr. Sheridan went over the matter with you

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Schwartz sent you a copy of the letter of instruction, did he not, that he had sent to you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And you really got yours first, did you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then you and Mr. Sheridan went over the evidence—the records—and Mr. Sheridan agreed with you in your view, as to the course to be pursued; that is to say, the examination of the witnesses there should be deferred until after we had the result of the Alaska field examinations?

Mr. GLAVIS. Yes, sir; he found that way.

Mr. VERTREES. And you say that that was a surprise to you, the reasons that you have already stated?

Mr. GLAVIS. Yes, sir.

Mr. JAMES. How many coal claims were pending in Alaska coal lands at that time?

Mr. GLAVIS. Between eight and nine hundred.

Mr. JAMES. Had nothing been commenced before that time in the coal ham coal entries?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Were these the oldest?

Mr. GLAVIS. In point of entry they were, but some of them were made about the same time, but they had not gone into the record.

Mr. VERTREES. Well, you meant—

Mr. GLAVIS. In point of being on the Land Office books they would be the oldest.

Mr. DENBY. Had any coal patents ever been issued in Alaska land?

Mr. GLAVIS. No, sir; none of them.

Mr. VERTREES. I will ask you if the number of these Cunningham entries are not from one to thirty-three, inclusive?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. They were the very first that were entered?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. I will ask you if the claimants had not, most of them, paid up the money in the early part of 1907, and only three paid as late as the fall of 1907?

Senator FLETCHER. Do you remember how many of those Cunningham was representing as attorney in fact?

Mr. GLAVIS. Thirty-three.

Senator FLINT. Was that question answered a minute ago you were asked with reference to the time of payment?

Mr. GLAVIS. No, sir; there were three that were filed on and completed in the fall of 1907.

The CHAIRMAN. The payments in the other cases were made in March and April and a few cases in October, and one of the cases in November, may be.

Senator FLETCHER. Would it not be a violation of rule 27 of the Land Office for one person to act as agent for more than four applicants? Rule 27 provides that no person shall be permitted to act as such agent for more than four applicants; signed R. A. Ballinger, commissioner.

Mr. VERTREES. That was not the rule at the time these applications were made, Senator.

Senator FLETCHER. I do not know of any change in that rule; that is the only rule that I find here.

Mr. JAMES. What is the rule, Senator?

The CHAIRMAN. There are two sets of rules, Senator; one for general coal lands and the other for Alaska coal lands.

Mr. VERTREES. If you will allow me a suggestion there, the rules were made in 1907, but the entries were made—the applications were made long prior to that; they were made in 1904, if I remember.

Senator FLETCHER. I have here the coal-land laws and the regulations thereunder (General Land Office, April 12, 1907), with amendments and supplemental circulars; reprint July 11, 1908.

Mr. JAMES. Well, it would apply—

Mr. VERTREES. The date of entry and payment is given at page 175 of Senate document, and the date of location is also given there.

Senator FLETCHER. This is a rule promulgated by the Land Department under the laws of 1904.

Senator FLINT. Those rules were promulgated several years after the entries were made.

Senator FLETCHER. They were promulgated under the act of 1900 and the act of 1904, and they are in force.

Mr. MADISON. In 1907 all the Alaska coal lands were withdrawn; they were then in a state of withdrawal.

Senator FLETCHER. Those rules are still in force. Reprint, July 11, 1908. Rule 27.

Mr. JAMES. Is there anything to show whether or not that was the law when these entries were made?

Mr. VERTREES. If you will look at page 175 of Senate document you will find there when the locations were made of all these 33 claims, and also the date of entry and payment. Of course six months have

to intervene before the application and payment, making months—dating it back you will see that it antedates the rules in 1907.

Mr. MADISON. Did Cunningham make the location of the

Mr. GLAVIS. Yes, sir.

Mr. MADISON. He went to Alaska in 1904 and located the did he not?

Mr. GLAVIS. Yes; I think it was either in 1904 or 1903.

Mr. MADISON. Then later as an attorney in fact he filed t for these parties, did he not?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. You did not know of anything in the rule time that prohibited him from doing that, did you?

Mr. GLAVIS. No, sir.

Mr. MADISON. You understood that that was in conform the law?

Mr. GLAVIS. Yes, sir. That was never questioned at all.

Mr. JAMES. It is not whether it was questioned or no the law? It might not have been questioned, but yet m been the law.

Mr. GLAVIS. If the rules and regulations in 1907 were in a with law, it was a violation of law for one agent to repre than four people.

Mr. JAMES. What you mean to say is that you never notic isn't that it?

Mr. GLAVIS. Yes, sir; that is.

Mr. JAMES. You never looked up those rules?

Mr. DENBY. I think we are working at cross purposes. of 1907—

Senator ROOT. Did you say he never looked up the rule

Mr. JAMES. I say that particular rule.

Mr. GLAVIS. They never had any rules. That was the I think I can explain it, and I wish Mr. Finney would corr I am not right on it. They never drew up any rules f until the rules of 1907, and therefore while they held th claims that were located prior to the rules being prepared would not have to be in accordance with the rules and re

Senator SUTHERLAND. Is there anything in the law i would prevent a person acting for more than four claimant

Mr. GLAVIS. I do not think so.

Senator SUTHERLAND. Well, then, the rule would have l if it had provided that he should not act for more than five three, would it not?

Mr. GLAVIS. Yes; if the law did not require it, and I do that the law said anything about the agents.

Senator SUTHERLAND. Suppose the rule, instead of provi he should not enter for more than four persons, had provide same person should not act for more than six, could you h fault with that rule under any provision of the law?

Mr. GLAVIS. No, sir.

Senator ROOT. Mr. Glavis, I understand from what testified, and please tell me whether it is the correct unders does the rule which provides that no person shall be per act as such agent for more than four applicants, to which

Fletcher has called attention, was that for the first time established in 1907?

Mr. GLAVIS. Yes, sir; that is my understanding.

Senator ROOT. So that locations made by agents for more than four applicants prior to 1907 were treated as being valid locations?

Mr. GLAVIS. Yes, sir; and could not be made to conform to those regulations; it would not be fair to them.

Senator FLETCHER. I call attention, in order that it may get into the record, to the reference that the prints appearing at page 314, part 2, of the coal-lands laws of Alaska reciting the act, and then follows the rule, and at page 318 is the rule to which I refer—318 of the hearings.

Senator ROOT. That is signed by R. A. Ballinger, Commissioner. Mr. Ballinger did not become commissioner until March 4, 1907, so that that rule is dated April 12, 1907. That was the rule long after these locations were made.

Mr. VERTREES. It is dated April 12, 1907

Senator FLETCHER. I know.

Mr. FINNEY. If I may be allowed to explain, I think I can exactly show why this rule had no application in Alaska. Application for patent is filed with the local land office, and notice is given for sixty days in the newspaper of the application. Now, the statute provides that during that sixty days of publication, or at any time within six months thereafter, an adverse claim can be filed by anyone, so that no entry can be had during that period of six months. Now, all of these entries—the last entry was made October 25, 1907—the applications to purchase must have been filed at least six months before the entries were actually allowed, so that it follows that all applications were filed in the local land office at Juneau by Cunningham, or whoever was the agent, before the adoption of these rules of April 12, 1907, which contain the limitation upon the number of persons whom an agent can represent.

Senator FLETCHER. Why were those rules ever adopted, Mr. Finney, if there is nothing in the law that provides for them? Why was such a rule made as the one in question there, limiting the number of applicants whom a person might represent?

Mr. FINNEY. The fact is, Senator, that some complaint had been made to us in the Land Office that individuals were going to Alaska and acting as agents for a large number of people who were not in Alaska prospecting at all, and the design was to cut those fellows down and allow them to represent only a limited number of persons.

Senator FLETCHER. But this rule was made with reference to the Alaska coal lands?

Mr. FINNEY. Yes, sir; but only applied to cases filed thereafter.

Mr. JAMES. Only applied to locations; is that it?

Mr. FINNEY. Only applied to cases filed thereafter.

Mr. VERTREES. Now, Mr. Schwartz states there that the whole force had been put at your service. Did you have all the agents and assistance that were necessary and proper?

Mr. GLAVIS. Yes, sir. I wanted Jones. I didn't have him.

Mr. VERTREES. How many did you have in May, 1908?

Mr. GLAVIS. In May, 1908, I had about—oh, I had about 7 I guess, about 6 or 7. Then I had more there that month at one period than I had at another.

Mr. VERTREES. Did you not have 6 for a portion of the 10 for the remainder of the time?

Mr. BRANDEIS. What time was this, Mr. Vertrees?

Mr. VERTREES. May, 1908.

Mr. GLAVIS. I can't recall it now.

Mr. VERTREES. I here hand you a list of your force and ask you whether that is correct or not; and if you so tell the committee how many you had at your service.

Mr. GLAVIS. Yes, sir. I had 11, including myself, in May.

Mr. VERTREES. Give it by months, please.

Mr. GLAVIS. That is, I wish to state, not all during the May, 1908, did I have 11. As shown here by this list, I had 11 from May 1 to May 28. No; I had 6 from May 1 to May 6, and from May 6 to May 28 I had 9 or 10. This list is mixed up here. I had 6 from May 1 to May 6, and then there was 3 more sent me from May 6 to May 28 and 1 more sent from May 28 on.

Mr. VERTREES. Well, in June, 1908; how many did you have in June, 1908?

Mr. GLAVIS. I had 17. One of them left on June 10, and another one arrived about June 24, so I only had him about six days.

Mr. VERTREES. Go through it by months.

Mr. GLAVIS. Another one was here in June—9th, on the 9th, another agent came on June 24, it shows here. July, 1908, I had 11 shown by this list. One of them left on July 1; so he was there a day during that month. August, 1908, there were 14. August 22 or August 23. September, 1909, this is—

Mr. BRANDEIS. Then is there a jump there?

Mr. GLAVIS. There is a correction; it should be 1908. One of them was only there eight days and another one only sixteen days. They left at that period. October, 1908, I had 15; one was there only half a month and two were there only a few weeks of the time. In November, 1908, I had 15; they have been there all the time. December, 1908, I had 15; one worked only four days and left the service; another one worked only four days and left the service, and another one left the service in January, 1909, I had 12; February, 1909, I had 12; and from February to March 16 I had 12. That is apparently the day I had Allen.

Mr. BRANDEIS. That is, you mean, took charge of the division?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. If that is a correct list, wouldn't it be better to plan to put it into the record?

Mr. VERTREES. This is a correct list, isn't it, Mr. Glavis, I think?

Mr. GLAVIS. Why, I presume it is correct.

Mr. VERTREES. From the examination you have given me, I believe it to be correct?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Then let it go into the record?

Mr. GLAVIS. The daily reports of these agents named here would show just where they were. These are some of the dates they were there, but I can not say as to the dates they left.

Mr. VERTREES. I am not on the point of dates. Those are the persons you did have in your service, you being the chief of the division, didn't you, and to the best of your recollection, along about the dates given there, isn't that right?

Mr. GLAVIS. Yes, sir; about that time.

The CHAIRMAN. Well, let the list go in.

(The list is as follows:)

Personnel of field force in first field division, Portland, Oreg., from May 1, 1908, to March 16, 1909:

May, 1908.

L. R. Glavis, chief.
J. H. Alexander, special agent.
Andrew Kennedy, special agent.
S. W. Norton, jr., special agent.
C. O. Pollard, special agent.
S. N. Stoner, special agent.
H. T. Jones, special agent.
J. W. Barker, special agent, May 28 to 31, inclusive.
F. L. Spaulding, special agent, May 6 to 31, inclusive.
E. H. Nixon, special agent, May 6 to 31, inclusive.
H. R. Barton, special agent, May 6 to 31, inclusive.

June, 1908.

L. R. Glavis, chief.
J. H. Alexander, special agent.
H. T. Jones, special agent.
Andrew Kennedy, special agent.
H. K. Love, special agent, June 24 to 30, inclusive.
S. W. Norton, jr., special agent.
C. O. Pollard, special agent.
S. N. Stoner, special agent.
J. W. Barker, special agent.
F. L. Spaulding, special agent.
A. R. Bowman, temporary timber cruiser.
David C. Adams, temporary timber cruiser.
R. P. Cowgill, temporary miner.
Charles Maguire, temporary miner, June 9 to 30, inclusive.
E. H. Nixon, special agent.
W. K. West, special agent, June 24 to 30, inclusive.
H. R. Barton, special agent, June 1 to 10, inclusive.

July, 1908.

L. R. Glavis, chief.
J. H. Alexander, special agent.
J. W. Barker, special agent, July 1 only.
J. H. Jones, special agent.
A. Kennedy, special agent.
H. K. Love, special agent.
D. C. Adams, temporary timber cruiser.
A. R. Bowman, temporary timber cruiser.
S. W. Norton, special agent.
C. O. Pollard, special agent.
S. N. Stoner, special agent.
F. L. Spaulding, special agent.
W. K. West, special agent.
Chas. McGuire, temporary miner.
R. P. Cowgill, temporary miner.

August, 1908.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent, August 1 to 22, inclusive.
 H. K. Love, special agent.
 D. C. Adams, temporary timber cruiser.
 A. R. Bowman, temporary timber cruiser.
 S. W. Norton, special agent.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 R. P. Cowgill, temporary miner.

September, 1908.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 H. K. Love, special agent, September 1 to 8, inclusive.
 D. C. Adams, temporary timber cruiser.
 A. R. Bowman, temporary timber cruiser.
 S. W. Norton, special agent, September 1 to 16, inclusive.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 R. P. Cowgill, temporary miner.

October, 1908.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent, October 16 to 31, inclusive.
 D. C. Adams, temporary timber cruiser.
 A. R. Bowman, temporary timber cruiser.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 R. P. Cowgill, temporary miner.
 C. H. Hartson, special agent, reported October 1, 1908.
 F. C. Rabb, special agent, October 7 to 31, inclusive.
 C. A. Sunderlin, special agent, October 8 to 31, inclusive.

November, 1908.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent.
 D. C. Adams, temporary timber cruiser.
 A. R. Bowman, temporary timber cruiser.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 R. P. Cowgill, temporary miner.
 C. H. Hartson, special agent.
 F. C. Rabb, special agent.
 C. A. Sunderlin, special agent.

December, 1908.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent.
 D. C. Adams, temporary timber cruiser, December 1 to 4, inclusive.
 A. R. Bowman, temporary timber cruiser, December 1 to 5, inclusive.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 R. P. Cowgill, temporary miner, December 1 to 5, inclusive.
 C. H. Hartson, special agent.
 F. C. Rabb, special agent.
 C. A. Sunderlin, special agent.

January, 1909.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 C. H. Hartson, special agent.
 F. C. Rabb, special agent.
 C. A. Sunderlin, special agent.

February, 1909.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, temporary miner.
 C. H. Hartson, special agent.
 F. C. Rabb, special agent.
 C. A. Sunderlin, special agent.

March, 1909, until 16th.

L. R. Glavis, chief.
 J. H. Alexander, special agent.
 H. T. Jones, special agent.
 A. Kennedy, special agent.
 C. O. Pollard, special agent.
 S. N. Stoner, special agent.
 F. L. Spaulding, special agent.
 W. K. West, special agent.
 Chas. McGuire, special agent.
 C. H. Hartson, special agent.
 F. C. Rabb, special agent.
 C. A. Sunderlin, special agent.

NOTE.—Mr. H. K. Love was in Alaska until June 24, 1908, when he reported to Mr. Glavis for duty.

W. L. V.

WASHINGTON, D. C., *February 11, 1910.*

Mr. VERTREES. Now, in that letter of instructions which Sheridan had from Mr. Schwartz, a copy of which was given to me, didn't Mr. Schwartz say this in reference to that work, affirming of his appreciation of your painstaking and careful work? This: "At the same time, the proper and expeditious determination of the field investigations at present devolve primarily upon you, and I am responsible for the result;" isn't that in that letter the instructions from Mr. Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I want to ask you if, in point of fact, the attitude of Mr. Schwartz and Mr. Commissioner Dennett all this time with respect to these claims was not this, that they believed the evidence was making out a case, that the claims should be completed and disallowed? Did you not know that they entertained that opinion all the time with reference to this Cunningham case?

Mr. GLAVIS. No, sir.

Mr. VERTREES. You did not?

Mr. GLAVIS. No, sir; I believed that they knew the result of a field examination.

Mr. GRAHAM. Now, which question is that an answer to? Are there two questions. Which one did you answer?

Mr. GLAVIS. That they believed the evidence was making out the cases?

(The stenographer repeats the question, as follows:)

Now, I want to ask you if, in point of fact, the attitude of Mr. Schwartz and Mr. Commissioner Dennett all this time with respect to these claims was not that they believed the evidence was making out a case and that the claims should be completed and disallowed—

Mr. GRAHAM. He answered to that. I think his answer was to the last question.

Mr. GLAVIS. Yes, sir; I think they thought the evidence was making out a case. I understood the question asked whether it was or not. They knew we were trying to make out a case.

Mr. VERTREES. It was the attitude of these officers I was getting at, not whether the evidence had been completed or not; and there may be no confusion I will bring it out clearly, Mr. Glavis, Mr. Commissioner Dennett and Mr. Schwartz, the chief of the service, who had examined and considered the evidence which had gathered, were of the opinion that a case was being made out for the cancellation of the Cunningham claims—was that not so?

Mr. BRANDEIS. To what time do you refer, Mr. Vertrees?

Mr. VERTREES. This first report, and the time he made his report with reference to the Cunningham journal, which was in March, 1909.

Mr. BRANDEIS. I beg your pardon.

Mr. GLAVIS. Yes, sir; I think they thought I was making out a case.

Mr. VERTREES. Did they not so express themselves to you more than one communication?

Mr. GLAVIS. I think they did. I think they referred to several communications; I do not recall the dates of them.

Mr. VERTREES. The result was that the only point of contention arose between you and Mr. Schwartz—this gentleman who was responsible for the results—merely as to the manner in which

evidence should be covered, and that arose in the summer of 1909, did it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And to state that—and you will correct me if I state it incorrectly—you are of the opinion that you should not proceed with the further examination of witnesses until you have received the report of the field examinations in Alaska, which were then being conducted and which would defer the case in the taking of these depositions a few weeks—six, if I remember correctly. That was your view, was it not?

Mr. GLAVIS. You put in there, Mr. Vertrees, in the question, further examination of the witnesses. There had been no examination at that time.

Mr. VERTREES. Well, if you prefer that, examination of witnesses. I want to know whether there had been any or not. The essential idea that I am getting at is, your view was that the examination of the witnesses in America should be postponed until you had the reports from Alaska as to the field examination.

Mr. GLAVIS. In the summer of 1909, do you mean?

Mr. VERTREES. I think it was; yes.

Mr. GLAVIS. No, sir; I told Mr. Sheridan that there were two or three people that I had to get affidavits from and I would do that before the experts got back from Alaska.

Mr. VERTREES. Well, that was a question between you and Mr. Sheridan, Mr. Glavis. What I am getting at now is as to the attitude of yourself and the office here. Mr. Schwartz was the man you communicated with principally, was he not?

Mr. GLAVIS. No, sir; the commissioner; most of our communications were directed to the Commissioner of the General Land Office, but I think neither of us understand one another as to the taking of evidence. Do you mean the actual hearings or the affidavits? I refer to the affidavits.

Mr. VERTREES. You refer to the affidavits?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. But you have in your communication there spoken of hearing, and we had that up the other day. I understood you to mean by hearing the taking of depositions of the witnesses before the commissioner?

Mr. GLAVIS. Yes, sir; the actual trial of the case. As I understood your question, you said the taking of evidence, and I thought you meant the securing of their affidavits—

Mr. VERTREES. Wait one moment. Now you say the actual trial of the case; as I understand, the case was to be tried by the commissioner—I mean the Commissioner of the General Land Office. Is that correct?

Mr. GLAVIS. Yes, sir; but he—

Mr. VERTREES. Wait a moment. Now you propose though to have what you call hearings; that is, taking of evidence before a special commissioner appointed to take it; is that not true?

Mr. GLAVIS. No, sir; that is not the Commissioner of the General Land Office. They designated a commissioner, a special commissioner, to take evidence around different parts of the country, and that is the taking of that evidence by this special commissioner is what I call the actual trial of the case.

Mr. VERTREES. That is what I am getting at, and I do not mean. Mr. Glavis, of course, whether you individually or you collectively, but I merely wanted to understand the proposition and the procedure, that you were going to take the evidence before a commissioner appointed to hear the witnesses, and he would write it down. Is that not correct?

Mr. GLAVIS. Yes, sir; take testimony.

Mr. VERTREES. That is what you call hearings?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. After he did that and had those hearings, then the evidence was to be transmitted to the commissioner who was going to try the case. Is that right?

Mr. GLAVIS. No, sir; that is practically the trial. The commissioner would then decide the case.

Mr. VERTREES. Which commissioner?

Mr. GLAVIS. The Commissioner of the General Land Office would decide the case.

Mr. VERTREES. That is what I am trying to get at.

Mr. GLAVIS. That is what we call the trial, the officer before whom they take the testimony. We always call that the trial.

Mr. VERTREES. But he did not consider the evidence and report and decide on it—that is, the man who took these depositions at those hearings?

Mr. GLAVIS. He took the testimony and decided it on points of law and objections, and then submitted the testimony after it was written up to the commissioner for decision.

Mr. VERTREES. You mean the Commissioner of the Land Office?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, you did not want these hearings, these depositions taken by that commissioner, to go on until you had heard from Alaska; that was your position?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Schwartz's position was that he did not think it was necessary to delay for that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And that was the only difference between you at that time, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Sheridan was sent out in that situation and Mr. Sheridan reported that he thought your view was the correct one?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And Mr. Sheridan's report was accepted?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And acted upon, was it not?

Mr. GLAVIS. I do not know whether it was. I can not say whether his was accepted or not. The Land Office did not take that action. They took that action after that report was received and after the Forest Service had, through Secretary Wilson, asked for a continuance.

Mr. VERTREES. Did they not reply both to Secretary Wilson, of the Agricultural Department, and also to the commissioner, and also to Mr. Sheridan, that it would be deferred, according to Sheridan's report?

Mr. GLAVIS. I think I recall such correspondence.

Mr. BRANDEIS. Mr. Vertrees, that letter to Secretary Wilson, I think, does not say that.

Mr. VERTREES. I call attention to the letter of Mr. Schwartz to Special Agent Sheridan on page 282 of the list of letters—page 535 of Senate document, in which he says:

P—HHS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 3, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Washington.

SIR: I have your letter of the 27th ultimo, in reference to the status of investigation involving the Cunningham group of coal entries in Alaska, and note your opinion that a proper presentation of this case will necessarily await return of Special Agents Kennedy and Stoner from Alaska, and that it is expected the taking of testimony may begin on October 15.

I concur in your letter, and you will continue in charge of the case and bring it to such state of completion as will enable the Government to properly present all the facts. In the meantime this office will arrange for stipulation between the Government and the Cunningham group for the taking of testimony before a commissioner and for the consolidation of all the claims, as to which matter you are directed to reply to my telegram of July 16, 1909, to Mr. Glavis, requesting the names of the towns and the order in which it is desired on the part of the Government to take testimony, which telegram Mr. Glavis has neglected to answer.

Respectfully, .

(Signed) H. H. SCHWARTZ,
Acting Assistant Commissioner.

CWN.

And I call attention to the communication on page 279 of the list of letters, being a communication from Mr. Pierce, Acting Secretary, as follows:

H. S. B.

ECF
DEPARTMENT OF THE INTERIOR,
Washington, July 29/09.

THE SECRETARY OF AGRICULTURE.

SIR: Replying to your letters of July 21 and 24, 1909, requesting delay in holding hearings involving coal-land entries in the Cunningham group, Juneau, Alaska, land district, I have to advise you that this department will gladly cooperate with your department in obtaining the material facts with reference to these claims and will take proper action when the reports are received. However, these entries have now been suspended for three years, and it is important that very early action be had relative thereto, not only because of the personal interests of the claimants, but of the vital importance, both to the people of Alaska and to the Government, that some portion of the Alaska coal deposits be available for use.

I have therefore to request that the Forest Service be directed to expedite in every possible manner whatever investigation it may desire to make, and to file its findings at the earliest possible moment.

Very respectfully,

(Signed) FRANK PIERCE,
Acting Secretary.

Now, if I understand you, Mr. Glavis, presuming somewhat upon what you have said, when these claims were clear listed in the first instance, and you wrote in that it should not be done, it was very promptly recalled; is that not correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And when you suggested that there was a great deal of work to be done they put at your command all the force of the service that you desired; is that not correct?

Mr. BRANDEIS. At what time?

Mr. VERTREES. Throughout, barring the time when the suspension by reason of a lack of appropriation. Is that not Mr. Glavis?

Mr. GLAVIS. Why, excepting in May, yes, sir—excepting May, 1908, I think. I believe at other times I have asked help than I got, but I do not recall them now.

Mr. VERTREES. Were they not all the time offering assistance that you needed in those matters?

Mr. GLAVIS. All the time?

Mr. VERTREES. I do not mean every day, of course.

Mr. GLAVIS. I understand what you mean.

Mr. VERTREES. You had no deficiency; there was no lack of assistance, was there?

Mr. GLAVIS. Yes, sir; in the work in Oregon, the force that in Oregon kept us busy there all during that time. We had the force to get that work out.

Mr. VERTREES. Have you not already said that no harm resulted by reason of the delay to the Government, in point of fact?

Mr. GLAVIS. From October? From the time——

Mr. VERTREES. At any time.

Mr. GLAVIS. No; I do not think there has been any harm. What harm could have been done in May, 1908, was cured by other developments in 1909 when I started in to investigate.

Mr. VERTREES. So no harm resulted from that. That is it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Is it not true that throughout the office there was sympathy with you and had your confidence, and you had confidence, and they so expressed it?

Mr. GLAVIS. Yes sir; I think so.

Mr. VERTREES. They complimented you on your action in those matters, did they not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And did they not express the opinion that your work had been efficient, that you had shown that the Birmingham group of claims were unlawful and they felt confident the Government would succeed? Was not that the expression when any expression was given?

Mr. BRANDEIS. I suppose you mean by officers, persons like Mr. Ballinger?

Mr. VERTREES. I mean those that he was writing to; say, the chief, Mr. Schwartz, and the commissioner, Mr. Deussen; superiors; that is correct, is it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And when Mr. Sheridan was sent out to investigate, Mr. Sheridan concurred with you, they very promptly accepted your decision with reference to that matter, notwithstanding the patience they had manifested before at your delay. Is that true?

Mr. GLAVIS. No, sir; I could not say that that was true. Sheridan's letter was dated——

Mr. GRAHAM. You will find Sheridan's special report on the list of the list.

Mr. GLAVIS. Yes, sir; Sheridan's report concurring in my views was July 27, and on July 29 Acting Secretary Pierce wrote the Secretary of Agriculture in reply to their letters of July 21 and July 24, requesting delay in holding hearings of the Cunningham group, and agreeing to do so.

Mr. JAMES. Was that not before they received Sheridan's letter?

Mr. GLAVIS. Oh, yes, sir; Sheridan's letter could not have gotten from Seattle, Wash.

Mr. VERTREES. Did not Mr. Dennett send in September—he was out there at that time, was he not—and did he not send in a telegram suggesting then that Mr. Sheridan was then going over the matter, and whether or not they ought to be delayed, and if so, he advised it; or was specific about it; I call your attention to telegram which appears on page 265 of the list of orders dated July 26 and in which Mr. Dennett, commissioner, being at Seattle, telegraphed Mr. Schwartz, acting commissioner, as follows:

[Received at 182ch xa g 86 Collect GR. BxSeattle, Wash., July 26. Answered (pencil).]

JULY 26, 1909.

H. H. SCHWARTZ,

Acting Asst. Commr., General Land Ofc., Washn., D. C.:

Sheridan concurs in advisability waiting arrival of Kennedy and Stoner from Alaska. Could proceed to trial October fifteenth and make report other cases after trial present case. Other alternative, recall Kennedy and Stoner from Alaska after examination claims in question without examining other claims. Latter course hardly desirable. If concurred in, return Phillips and Smith to Denver. Glavis reports ability overtake his work first of year. No necessity for you to come.

DENNETT, *Commissioner*,
[Mr. Murphy (pencil).]

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. That means, does it not, that if he concurred in that advice of Sheridan's that the matter be postponed, that he would return Phillips and Smith, who had been summoned there together?

Mr. JAMES. Look at the telegram just above that—Seattle, Wash., July 26. It seems to bear the same date and is directed to Schwartz by Dennett.

Mr. VERTREES. You will notice, Mr. James, at the end of it there is a notation, "This telegram dictated but not sent."

Mr. JAMES. I noticed that, but I think it ought to be read there. It is as follows:

Sheridan is going over the cases; two assistants arrived. If Sheridan's recommendation to postpone until November there is nothing here for assistants. Advise parties postponed on request of forestry. It may be for the best after all, as I will explain.
DENNETT.

The CHAIRMAN. That appears not to have been sent.

Mr. JAMES. I say it was not sent.

Mr. GRAHAM. But it shows the knowledge that Mr. Dennett had in his mind at the time.

Mr. VERTREES. It shows knowledge of the Forester that Sheridan was then going over the cases and did not know what it would result in; that the two assistants had arrived. I suppose he means Phillips and Smith, those men mentioned in the next telegram of the same date

It says that if Sheridan's recommendation to postpone was concurred in they would not need those assistants. It suggests it shows he is relying on Sheridan's recommendation.

Mr. JAMES. It directs specifically there, "Advise postponed on request of Forestry" right following that.

Mr. VERTREES. But it says, "May be best after all, explain."

Senator FLINT. Mr. Chairman, I suggest that we hear the witness.

Mr. BRANDEIS. Is there any question pending?

Mr. VERTREES. At any rate, at that time, Mr. Glavis, the suggestion was agreed to by Mr. Schwartz, by Mr. Dennett, by Mr. Ballinger, by Mr. Pierce, by all of them, whether it was at your request or the Forester's request, or Mr. Sheridan's report; that was it not?

Mr. GLAVIS. Yes, sir; that they did continue the hearing.

Mr. VERTREES. Now, what I want you to do, in view of this, is to state the particular fact, that is, the particular official who was any one of these gentlemen that you say shows a dereliction and a lack of good faith in his action.

Mr. GLAVIS. In this connection?

Mr. VERTREES. Throughout; either one of these officials—Mr. Schwartz, Mr. Dennett, Mr. Pierce, or Mr. Ballinger, all of whom have mentioned along there—speaking now of their official regard to this matter; and I want you to point out to this committee the act which you say shows bad faith on the part of the Forest Service officers.

Mr. GLAVIS. That is, in regard to the Alaska coal cases.

Mr. VERTREES. Certainly.

Mr. GLAVIS. Taking it up out of order a little bit—I refer to a telegram of July 23, 1909, on page 260, from Dennett, commencing to H. H. Schwartz, acting assistant commissioner, General Land Office, Washington, D. C.:

Secretary desires to refrain from any action in proceedings in Alaska. I authorize you to recommend to Acting Secretary Pierce to acquiesce in the Forestry not to set cases for hearing immediately.

So from that it shows that the action was taken postponed until after the hearings, I think, upon request of the Forestry Service upon the request of the —

The CHAIRMAN. But that does not answer the question as to what involved bad faith. Did that telegram involve bad faith?

Mr. GLAVIS. It has been stated that the action was taken upon the report of Mr. Sheridan, and I wanted to show that it was also—of course the question, Mr. Chairman, that the act which I asked me calls for a whole explanation of the facts as I have stated them, and which I did for his benefit when I first came on the stand, and of course I will try to repeat them. I might, if you wish, add the fact that my answer to those would be the same as I gave you in the opening part of the cross-examination, without repeating what I have said.

Mr. VERTREES. Well, now, Mr. Glavis, you have brought out that telegram out there. Was not this the situation that Mr. Ballinger and Mr. Dennett were both out in the West?

attention to page 244 of the list, the telegram of July 16 from you to the Commissioner of the General Land Office, you being at Seattle, in which you say that you have conferred with the Secretary of the Interior and—

he suggests I wire you and ask if my report of July 8 and telegram July 6 was considered before you sent telegram this date. In view recommendations stated in reports above referred to, it will be difficult to comply with your telegram unless you desire hearing proceed without further investigation.

Now, is it not a fact that what you mention there is a suggestion of Secretary Ballinger in the interest of what you desired to have done?

Mr. GLAVIS. Yes, sir; it is a step taken in the right direction.

Mr. VERTREES. That is, it was not against what you desired, or to thwart you, but to aid you. It came, moreover, in the form of a suggestion he made?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. There was no order in the matter whatever?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, Mr. Dennett, being at Seattle, also telegraphed Mr. Ballinger on the subject—he was not at Seattle. This telegram is not dated at Seattle.

Mr. GLAVIS. Mr. Dennett was at Seattle at that time.

Mr. VERTREES. Where was Mr. Ballinger?

Mr. GLAVIS. At Hermiston, Oreg.

Mr. VERTREES. He was in Oregon?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. This telegram that I call your attention to—

Senator ROOT. Look at page 244 of the list.

Mr. VERTREES. It is dated July 17, 1909, and is at the bottom of page 244, and say if Mr. Dennett, being at Seattle, did not then telegraph to Secretary Ballinger, Mr. Ballinger being at Hermiston, Oreg., as follows:

Advise telegraphing Schwartz authorizing him delay issuing notices in important cases subject our talk here until Sheridan can examine evidence collected.

Is not that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, I will ask you if on July 23—you will please look at page 259 of the list—Mr. Ballinger did not reply to that as follows, to Mr. Dennett:

Considering my personal reluctance to direct proceedings in Alaska coal cases, you should make necessary directions to Schwartz.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, so far as you know out there, Mr. Glavis, is not this true, that Mr. Ballinger's only action was the suggestion made to you which was in the interest of what you desired, and can you name any other act out there contrary to that?

Mr. GLAVIS. Yes, sir; the telegram of July 17, 1909, that Dennett sent him shows they had discussed the cases, for Dennett does not even mention the Cunningham case. It says "authorizing him delay issuing notices in important cases, subject our talk here." And Mr. Ballinger in his reply of July 23 knew what case it was.

Mr. VERTREES. Had not Mr. Dennett gone to Mr. Ballinger out there before he left Seattle and complained of your attitude toward him; was not that the conversation they had and the one referred to?

Mr. GLAVIS. No, sir; I do not think so; I do not think so, but Mr. Dennett—I do not think Mr. Dennett was in Seattle when he first arrived—let me see, now—you think Dennett—well it was just about the day he and Ballinger went away, and I didn't think we had such trouble then. The time Mr. Dennett was so worried gave him the letter of July 26.

Mr. VERTREES. Well, that answers it. Now I want the question we left a while ago, and I want you to commit the official act—in this whole matter, from the Secretary Ballinger, in this whole matter—that you have faith on his part.

Mr. BRANDEIS. You mean to include in the word "omission"—acts or omissions?

Mr. VERTREES. I did not mean to include it, but I will include it later, but not now.

Mr. BRANDEIS. Not now.

Mr. VERTREES. I am asking about the official act when he was Secretary. What act in regard to this, you have gone over it and stated it, was there anything that showed bad faith on his part?

Mr. GLAVIS. Then I will have to—if you want me to again, I will do it.

Mr. VERTREES. Perhaps you do not understand me to ask you what proofs or how many things I want together to prove it; that was not my question; but a particular act on his part which you say in itself, to some extent, tends to prove and establish bad faith on his part of the Interior in regard to this matter.

Mr. GLAVIS. You do not want all the acts; you just want that it?

Mr. VERTREES. You understand my question, I think the question is very clear. I am not asking you as to what you would give to the whole, but as to what official act of Mr. Ballinger that you say in itself and taken by itself, to some extent, great or small, tends to show bad faith and of that on his part?

Mr. GLAVIS. While he was commissioner or while he was Secretary?

Mr. VERTREES. While he was Secretary, that is what I want to name it; don't try to tell what it was. I will commit the next question. Just name the act; that is what I am asking.

Mr. GLAVIS. Well, his act in reference to the sending of the letter for decision; I will give that one.

Mr. VERTREES. You mean to Mr. Pierce, do you?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, now give me the next one that is improper?

Mr. GLAVIS. As Secretary?

Mr. VERTREES. Yes; as Secretary.

The CHAIRMAN. You mean by that, Mr. Glavis, that you referred to Mr. Pierce for an opinion, was that what you referred to?

Mr. GLAVIS. Yes, sir; not sending it to the Attorney General had agreed to.

Mr. VERTREES. Well, then, what is the next one you say tends to show bad faith on his part as Secretary of the Interior with reference to the Cunningham matter?

Mr. GLAVIS. It is only of the Cunningham case, is it?

Mr. VERTREES. Anything else you know. I do not restrict you to that.

Mr. GLAVIS. Also at that conference on May 16 and 17 that Mr. Schwartz and Mr. Dennett, Mr. Ballinger, and myself had in his office, in which he told me not to notify the Congressman involved in the Green group.

Mr. VERTREES. What else?

Mr. GLAVIS. I am trying to get them in their order. I think also the fact that Mr. Ballinger, while not officially appearing to be guiding and directing the investigation in these Alaska coal cases, the fact that he did do it indirectly, as it was found necessary to consult him and get his consent to continue them, would indicate that to me.

Mr. VERTREES. What do you refer to there?

Mr. GLAVIS. To the conferences and Mr. Schwartz's telegram to Mr. Dennett, that he thinks it ought to be done, and Mr. Dennett's telegram to Mr. Ballinger advising him of the contemplated action.

Mr. VERTREES. You mean, then, out West there?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well, now, what is the next one that you say, to your mind—the specific fact that to a greater or less extent to your thinking and to your mind shows improper conduct, official conduct, on the part of Mr. Ballinger—of all these things that you have mentioned?

Mr. GLAVIS. Those are all that I can think of right now; that is, while he was Secretary.

Mr. VERTREES. We will get to the other presently—when he was commissioner—I want to classify them. Now, of all the things that you have mentioned and testified to, the facts, the only three that to your mind carry any evidence great or weak as to official misconduct on the part of Secretary Ballinger, as described here, are these three—

Mr. GLAVIS. No, sir; I can not think of all of them just offhand to give them. In order for me to be fair I would have to go through the record during those dates and pick out any other documentary evidence that may appear. Those things just occur to me now. Now, another thing that occurs to me since you asked me is the fact that when I called his attention to the fact on July 16 that they were going ahead, and his knowing the conditions and the situation in the Cunningham group, knowing the prominence of the people and the fact that they had a lot of money, and put up a hard fight, and the fact that the Land Office had ordered me to go ahead, in view of my report, I think that instead of the proper action, an action that a man should take, having the best interests of the Government at heart, or what a man would do if he was protecting his own property and had the authority to do it, would have been to direct a telegram to be sent telling them not to have the hearings until the field examination was concluded.

Mr. VERTREES. Now, I am trying to get you to state those things that have significance, Mr. Glavis, then if there be anything that tends to reflect upon an official of the importance of the Secretary of

the Interior and show that he has been guilty of bad conduct that has not recurred in searching through—for you on this matter to get it up—now, I want you to state particular fact, and by fact I mean official act on his part stated three, or rather you have stated one of omission four, and three of commission. Now, is there anything, official act of his, which to your mind occurs?

Mr. GLAVIS. I do not recall any now.

Mr. VERTREES. Now, the one you have stated here of omission, which you have suggested yourself, is that with respect to him and told him they were wanting a trial of this thought he ought to interfere, and he informed you that he wanted to—is that your statement?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, don't you know as a matter of fact both to you and to Mr. Moore, the representative of the group, and everybody else, that Mr. Ballinger had recommended any action in the matter, official action—that he had told Mr. Pierce, his first assistant, this matter because he had known some of the Cunningham people?

Mr. GLAVIS. No, sir. On the contrary, I do not think your statement is true.

Mr. VERTREES. Well, what did he do?

Mr. GLAVIS. He had that conference with Mr. Denham, Schwartz and myself in May.

Mr. VERTREES. He had a conference, but was not present at a general conference on the subject of the whole matter, without regard to any particular thing?

Mr. GLAVIS. Yes; but he referred, you must remember, to the Cunningham group.

Mr. VERTREES. What I am asking you now is with respect to this Cunningham group, for this is the one in which you ought to have stopped the transaction; that is the one you said you ought to have interposed.

Mr. GLAVIS. Yes, sir; that is the only statement made, but you can readily see that his action in regard to the transaction as affecting the Green group of claims, which he as attorney brought under the act of May 28, 1908, would not be to his action as a public servant in connection with his position as attorney for the claimants.

Mr. VERTREES. Is it not a fact that this was his position? As Secretary he found many thousands of claims that were needed investigation in the Land Office, something like twenty thousand—34,000 cases in all; and that he stated that must be done, and he gave general instructions and made it known don't you know that is so?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Without regard to any cases?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you know that there were Alaska coal claims, and that there had not been a trial in the Alaska fields?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And of those nine hundred a good many were impatient; that the Cunningham group, so far as that was concerned, were the first, and that they had paid their money, and that Mr. Ballinger, while he was out of office—that is, between the time he was commissioner and Secretary—represented some of them as an attorney in some respects; you knew that to be so, did you not?

Mr. GLAVIS. Yes; I understood he represented all of them.

Mr. VERTREES. Well, all of them. So that when he came in as Secretary, while he took charge of the land situation in general, and of the coal fields, he gave general directions for the expediting of these cases, and he especially refused to make any order whatsoever in the Cunningham cases. Don't you know that?

Mr. GLAVIS. I heard he did, but I heard he first acknowledged to us, to Mr. Dennett and Mr. Schwartz and myself, and later after a conference, the same day to me that he would take this action in sending this letter to the Attorney-General.

Mr. VERTREES. But the action was simply to send the letter to the Attorney-General to take his opinion on the act of 1908, was it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And don't you know that the Cunningham people refused to act under the act of 1908?

Mr. GLAVIS. Yes, sir; they refused June 29, 1909, but—

Mr. VERTREES. But you were not officially informed before that; that they had refused?

Mr. BRANDEIS. Why don't you let him complete his answer?

Mr. VERTREES. Because he is putting in a "but" there that to my thinking they did not make.

Mr. GRAHAM. I would like to pass my judgment on it and see whether it is or not that way.

Mr. GLAVIS. But after the decision of the Attorney-General—

Mr. VERTREES. Had you not been informed before that letter from Mr. Schwartz that the office was unofficially informed that they were going to do that very thing?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And in point of fact does not the Attorney-General's opinion show when it did come that the very notes you put to him in terms excluded every case of that class to which the Cunningham group belonged?

Mr. GLAVIS. No, sir; I do not think so.

Mr. VERTREES. Does not the Attorney-General say so and so decide whether it is correct or not, whether or not that is the decision of the Attorney-General of the United States?

Mr. GLAVIS. The Cunningham what? What was the statement?

Mr. VERTREES. You know what I said. Read it. In that connection, before you read it, look at page 804 of the Senate document and see if the Attorney-General does not make this statement:

That the letter submitting the question to the Attorney-General, the form of which was prepared by Mr. Schwartz in conference with Glavis and was in part suggested by him, by its very terms excludes any possible reference to the Cunningham claims.

Mr. GLAVIS. Yes, sir; that says that, but he does not take up the other facts connected with the law, like taking it up personally with the Attorney-General.

Mr. VERTREES. I have not got to that yet. I am on this question you are talking about now. Now I will call your attention to page

197 of the list of orders, and especially to a letter of Governor Moore, who represented the Cunningham claimants, page 197, a letter dated May 22, a letter to Mr. R. A. Ballinger. The letter is written by Mr. Moore, the representative of himself and other claimants of the Cunningham group, in which he says this to the Secretary:

LETTER OF MILES C. MOORE TO SECRETARY BALLINGER, MAY 22, 1909.

THE NEW WILLARD,
Washington, D. C., May 22, 1909.

Hon. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: I had hoped to see you again before leaving the city, but realize that your time is fully occupied. Assistant Secretary Pierce proved a disappointment, and I am going home with a message that will give scant comfort to my associates. Your reasons for turning this matter over to your assistant are appreciated, but we had all felt that when you were named to the position of Secretary, with your full and complete knowledge and your sense of justice, that our long-delayed patents would be forthcoming.

Assistant Secretary Pierce read to me yesterday a letter recently addressed to the Commissioner of the General Land Office, instructing him, in effect, to construe the law liberally and not to allow technicalities to obstruct or delay where important interests were involved and where no moral turpitude or fraudulent intent was shown. It now seems to me in reviewing the situation that technicalities have been allowed to govern. The entries in Cunningham's memorandum book, made prior to the extension of the coal-land laws to Alaska, seem to be the bugaboo, although some stress is put upon the fact that there was an understanding to unite these claims after patent. As you know, no agreement was entered into, and if it had been simply a matter of mental reservation, while the result would have been the same, we would not have been accused of violating the law. Both Mr. Pierce and Mr. Dennett admit there was neither fraudulent intent nor moral turpitude shown. Patents are still offered under the new law, but as no money can be raised on them, another year is lost and development delayed. This letter is not intended for your official files, but simply to express the feeling of disappointment felt by myself and many of your former friends. If it were possible to have a reconsideration of this matter I am sure it would be much appreciated and involve no one in a censurable way.

Very sincerely,

MILES C. MOORE.

Mr. BRANDEIS. I would like to ask, Mr. Chairman, that the original of that letter and the letter of May 24 and the letter of March 17 of ex-Governor Moore, or any other letters or telegrams from him in the possession of the Secretary or the Land Office or on his personal file, be produced. I presume you will be able to do that.

Mr. VERTREES. Yes, I have no doubt of that.

The CHAIRMAN. Those letters were in this document here.

Mr. BRANDEIS. It is the original that I wish; I wish to see the original.

Mr. VERTREES. I wish to say that I have never seen the original ones myself.

Now, does not that letter say on its face, Mr. Glavis, that the reason why Mr. Secretary Ballinger had turned the matter over to Mr. Pierce, were the personal reasons that he considered himself bound by his former associations, and that he ought not to take up the Cunningham matters; and does not he also say in the same connection that Mr. Pierce's decision, the one of which you complain, has been a disappointment to him too.

Mr. GLAVIS. No; the decision I think that Mr. Moore refers to there is a decision that he can not get—that they would not issue patents under the old law.

Mr. VERTREES. Well, let us go a little further and read. On page 198 is the reply from Secretary Ballinger to that letter of Mr. Moore. And this is brought to my attention before I asked you that question. Does not Mr. Moore, Governor Moore, bring to Secretary Ballinger's attention in the letter of May 22, the fact that Secretary Pierce had read a letter recently addressed to the Commissioner of the Land Office giving him general and broad instructions as to the law—the act of 1908—showing that it did deal with that?

Mr. GLAVIS. Yes, sir; that speaks of the May 28 act.

Mr. VERTREES. Now, go to your letter that I called your attention to, of May 24, 1909—the letter of Mr. Secretary Ballinger to Governor Moore at Walla Walla, Wash., replying to the one which has just been read—and does not the Secretary there say to Governor Moore:

LETTER OF SECRETARY BALLINGER TO MILES C. MOORE, MAY 24, 1908.

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DEPARTMENT OF THE INTERIOR,
Washington, May 24, 1909.

HON. MILES C. MOORE,
Walla Walla, Wash.

DEAR SIR: I am in receipt of your letter of May 22, 1909, expressing your disappointment at opinion of First Assistant Secretary Pierce with reference to what are known as the Cunningham coal entries in Alaska, and stating that it seems to you that a technicality has been allowed to govern rather than a liberal construction of the law.

In reply I have to advise you that I can not undertake to issue any order or make any ruling in the matter as requested because of the embarrassment which would result from the fact that I was, while not holding an official position, called upon to advise in the matter. The case has, however, been carefully looked into, and I wish to say that, in view of all the facts now disclosed, I would, if I were ruling upon the matter, hold that the principle announced in the opinion of Judge Hanford in the case of *United States v. Portland Coal and Coke Company et al.*, October 5, 1908, is directly applicable to these cases, and that if the allegations made be proven patents can not issue under the provisions of the act of April 28, 1904.

As you have been advised, the department is disposed to give the coal-land act of May 28, 1908, as liberal a construction as is consistent; and if you and your associates desire to take advantage of that act you should proceed in accordance with same and with circular of instructions of July 11, 1908. In this connection attention is directed to the paragraph of instructions entitled "Pending entries."

Very respectfully,

R. A. BALLINGER, *Secretary.*

Now, I call your attention to Governor Moore's reply to that, which is on page 199 of the list of orders, dated May 24, written from Chicago to Mr. Secretary Ballinger.

Mr. BRANDEIS. I do not think, Mr. Vertrees, that that is a reply. That is another letter written before the one just read could have been received.

Mr. VERTREES. I think you are correct about that, Mr. Brandeis. It is not a reply, but a letter, at any rate. He says to Mr. Secretary Ballinger:

LETTER OF MILES C. MOORE TO SECRETARY BALLINGER, MAY 24, 1909.

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CONGRESS HOTEL AND ANNEX,
(also) AUDITORIUM HOTEL,
Chicago, May 24, 1909.

HON. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: I have to-day addressed a letter to Senator Jones, asking him to take up the matter of our delayed patents with the President. Please do not construe this as meaning to go over your head. Owing to the fact that you were at one time

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counsel for our people, you can not consistently act. Assistant Secretary not understand the case very well, and has been influenced by Glavis, done some disreputable things and become involved in a controversy with him, is prejudiced and wants vindication. The commissioner naturally keep the record of his office clear and avoid responsibility. The President is our only hope, and we are appealing to him through Senator Jones.

Please do what you can consistently for us.

Very truly, yours,

(Signed)

MILES C.

Now, on page 204, did not Secretary Ballinger reply to home in Walla Walla, Wash., under date of May 27, 1909, a

LETTER OF SECRETARY BALLINGER TO MILES C. MOORE, MAY 27, 1909

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SECRETARY'S OFFICE
DEPARTMENT OF THE INTERIOR
Washington, D. C., May 27, 1909

MY DEAR SIR: Replying to your letter of May 24, addressed to me from in which you criticize the action of Assistant Secretary Pierce and Chief Division Glavis in connection with the Cunningham coal entries, I can only say that what I have heretofore stated to you, that I am not in a position to direct officers to whom these matters have been assigned, particularly in view of that I feel some embarrassment on the ground of having heretofore acted as a person before I became Secretary of the Interior. I believe your criticism is warranted, but have myself taken this matter up with the President and the General, so that the action of this department will probably be reviewed by him in which event you will be promptly advised.

Very truly, yours,

(Signed)

R. A. BALLINGER

Mr. MILES C. MOORE,
Walla Walla, Wash.

Do not those letters indicate that Mr. Secretary Ballinger is having as much trouble on the other side with those people as you are having on your side?

Mr. GLAVIS. I do not know.

The CHAIRMAN. What was the answer?

Mr. BRANDEIS. He just begun.

Mr. GLAVIS. I just began. It looks that way.

Mr. VERTREES. Well, we will pass from that to another question. You stated when you were enumerating things that looked suspicious to you that Secretary Ballinger did indirectly control the case.

Mr. GLAVIS. Yes, sir.

Mr. BRANDEIS. Now, how did he indirectly control the case?

Mr. GLAVIS. What indicates this, I think, is the fact—

Mr. VERTREES. What I want to get at is instead of showing him—I should have put it this way: What fact, what act could you put your finger on that tends to show he indirectly controlled the case?

Mr. GLAVIS. His being consulted on the case. It appears from a letter of July 17th, at page 244, that Mr. Dennett and Mr. Glavis conferred in regard to the matter relative to the cases.

The CHAIRMAN. Which telegram do you refer to?

Mr. GLAVIS. That is the one, number 21, at the bottom of page 244. It appears from that telegram also that Mr. Schwartz thought it necessary to confer with Mr. Dennett about continuing the case. Then there is a telegram on page 260 on top of the page, which

Mr. Schwartz that Secretary Ballinger desires to refrain from any action which would indicate that Mr. Schwartz thought he probably should be consulted before continuing.

The CHAIRMAN. Read that telegram, Mr. Glavis; it is very short. Mr. GLAVIS (reading):

Secretary desires to refrain from any action in proceedings in Alaska coal cases. I authorize you to recommend to Acting Secretary Pierce to acquiesce in request of Forestry not to set cases for hearing immediately.

It is not from that telegram alone, Mr. Chairman; but taking it in connection with the telegram of July 17, on page 244, in which Mr. Dennett advising telegraphing Schwartz, giving him the authority to delay, and the fact that on page 260 is the telegram of July 23 that the Acting Secretary was to recommend to the Forestry not to push the cases, it would show the Interior Department was directing the work.

The CHAIRMAN. Mr. Glavis, those telegrams simply go to show that he authorized a delay to be made in the hearing, but it didn't indicate, or in any other way meddle in the matter; simply granted his request for a postponement; isn't that true? Those two telegrams on page 244 and page 260.

Mr. GLAVIS. No, sir.

Mr. VERTREES. Mr. Chairman, if you will allow me, I think I can bring that out clearly.

The CHAIRMAN. Very well. Go ahead.

Mr. VERTREES. Mr. Glavis, you have stated, when asked to put your finger on an official act which showed that he was indirectly acting when he said that he did not, or would not act officially, and you put your finger on those telegrams. Now, I will ask you if this is not what those telegrams show? First, on the 16th of July you, yourself, conferred with him on the subject, and that while he gave you no orders, he suggested that you wire into Washington to the department and ask them whether or not, when they made the order they had made on you, they had your reports of July 8 and your telegram of July 6, and you have stated to this committee, haven't you, that that suggestion was entirely in the interest of what you wanted done?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, the very next day, the telegram to which you refer from Mr. Dennett to Mr. Ballinger says to Mr. Ballinger that he advised telegraphing Schwartz authorizing him to delay issuing notices in important cases. Now, in response to that telegram did not Mr. Ballinger reply?

Considering my personal reluctance to direct proceedings in Alaska coal cases, you should make necessary directions to Schwartz.

That is on page 259.

Now, do you think in showing that, while Mr. Dennett did call on him and was advised that such and such an order be made, Mr. Ballinger replied to him in view of his personal reluctance he should not apply to him at all, that he should apply to Schwartz?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Or rather he directed Schwartz to make the necessary directions.

Mr. GLAVIS. But it also shows something further, Mr. Vertrees.

Mr. VERTREES. Well, what further?

Mr. GLAVIS. It shows that Mr. Dennett, who was Commissioner of the General Land Office, and who had full charge as to postponing the hearings without consulting Ballinger, had consulted Ballinger, as shown by his telegram of July 17, as late as that, and as the result of such a conference evidently he thought it necessary to advise with Mr. Ballinger and get his authority to continue the hearings, as shown by the telegram of July 17.

Mr. VERTREES. Upon the contrary, isn't that telegram in the same form as the one he sends Schwartz? He says to Ballinger on page 244 that he advised telegraphing Schwartz authorizing delay in the issuing of notices; that is to say, that he, the commissioner, makes that suggestion to his superior, the Secretary.

Mr. GLAVIS. That is the point I want to make, that Mr. Ballinger wasn't having anything to do with it. If it was an ordinary procedure, he would take such action without requiring the directions of the Secretary, because such an action is a routine action on the part of the commissioner. It does not require the consent of the Secretary to continue a mere hearing if he wanted it continued.

Mr. VERTREES. If he thought that way—at any rate, when he approached him on the subject he refused, did he not, as shown by the telegram on page 259, in which he says: "Considering my personal reluctance to direct proceedings in Alaska coal cases, you should make necessary directions to Schwartz?"

Mr. GLAVIS. That is what he says; yes, sir.

Mr. GRAHAM. Referring to that telegram, Mr. Witness, isn't it true that he specifically refers merely to the matter of direction and has no reference whatever to a conference?

Mr. GLAVIS. Yes, sir. It also—the statement "you should make necessary directions to Schwartz"—is an order to do it.

Mr. VERTREES. Yes. And isn't it true that instead of doing that, Mr. Dennett telegraphs to Mr. Schwartz, on page 260, informing him that the Secretary desires to refrain from any action in proceedings in the Alaska coal cases, and then authorizes him to recommend to Assistant Secretary Pierce to acquiesce in the request of Forestry not to set cases for hearing immediately?

Mr. GLAVIS. Yes, sir; it shows it calls Mr. Schwartz's attention to that fact.

Mr. VERTREES. And did not Mr. Pierce then do that as assistant secretary?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you know, when it came to a matter of opinion of the construction of the act, all orders, and everything, that Secretary Ballinger refused under all circumstances to make a positive order or direction in respect to those coal cases in any respect, and if you say that isn't true I will ask you to state one, any one instance, in which he made an order or gave a direction, as Secretary, to anybody?

Mr. GLAVIS. He directed Mr. Schwartz and me to prepare that letter, for his signature, to the Attorney-General, which covered them all.

Mr. VERTREES. That was an official act with respect to any cases, so far as that is concerned?

Mr. GLAVIS. It covered all the Alaska coal cases.

Mr. VERTREES. Of course it covered all the Alaska coal cases. He stated an abstract question to the Attorney-General, didn't he?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. For the construction of a statute, without any relation, so far as that paper is concerned, to any case at all; isn't that true?

Mr. GLAVIS. But the letter we prepared didn't mention any particular cases, but it referred to all the cases; and the proper construction of the statute was very vital to the determination of whether or not any of those Alaska coal claimants would get their patents.

Mr. VERTREES. I am not on the advisability and usefulness of correctly construing this statute or that statute, or statutes in general; I am on the question now of Secretary Ballinger's official action, and I call on you again to put your finger on an act of his, an official act as Secretary, which you wish this committee to understand as proving to any extent bad faith on his part or improper conduct.

Mr. GLAVIS. His action in that conference, and then his failure to act as the result of that conference after agreeing to do it, knowing the seriousness of it.

Mr. VERTREES. I am on the question where you stated that he indirectly controlled—that is what I am talking about, what his act indicates that he did, and you refer to those telegrams?

Mr. GLAVIS. Those telegrams.

Mr. VERTREES. You have nothing else beside the telegrams? Well, we have gone over that.

Mr. GRAHAM. The question was a very general one and opened up the whole field again, it seemed to me.

Mr. VERTREES. The question was too general, and I am taking up the subheads he gave a while ago; I admit that; so I came back to it and tried to correct it.

Mr. GRAHAM. And in doing it, did it in such a way as to make it appear it was the witness's fault and not yours; that is one of the things I have been disposed to complain about.

Mr. VERTREES. I am subject to correction if that is true.

Mr. JAMES. This telegram of July 17—

Mr. VERTREES. What page is that?

Mr. JAMES. On page 244—directed to Mr. Ballinger, from Mr. Dennett, what about that telegram? I will read it in order that you may give your opinion: -

Advise telegraphing Schwartz authorizing him to delay issuing notices in important cases subject to our talk here until Sheridan can examine evidence collected.

(Signed) DENNETT.

What is there about that that refers to the Cunningham cases? The attorney and you both seem to be of the opinion that it refers to the Cunningham cases?

Mr. GLAVIS. I can explain that. It says "delay issuing notices in important cases." Now, the notices in the Alaska coal cases were the only notices which were about to issue, the notices in the Cunningham group. As to what was important cases will be shown by the Secretary's reply, in which he says "that he desires to refrain from acting in the"—

Senator PURCELL. Page 260.

Mr. GLAVIS. That is not his telegram.

Senator PURCELL. Page 64, I guess.

Mr. JAMES. If I understand you, you say this telegram does refer to the Cunningham group?

Mr. GLAVIS. Yes, sir.

Senator PURCELL. Page 259?

Mr. GLAVIS. Yes, sir. Then Mr. Ballinger says, "considering my personal reluctance to direct proceedings in the Alaska coal cases, you should make necessary directions to Schwartz. The only proceeding pending at that time, in which the issuance of notices was pending, were in the Cunningham cases; and, as I recall it, also the letter that Mr. Dennett writes Mr. Ballinger on July 23, 1909, on page 260, expressly states that it is the Cunningham case. He says, 'I telegraphed you yesterday advising authorization to Schwartz not to set the Cunningham cases for trial immediately.' That shows what he meant by those important cases.

Mr. JAMES. Now, then, does that telegram indicate from the words "subject our talk here" that they were talking over this Cunningham case, if he refers to the Cunningham case?

Mr. GLAVIS. That would be the only conclusion that I could reach from the telegram; and his letter confirmed that part of the telegram.

Mr. VERTREES. He talked with you about the Cunningham cases, too, did he not? Or rather you talked to him, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, my questions are not on whether or not Mr. Ballinger talked to you about those cases on the outside, but whether Mr. Ballinger, when it came to a question of official action, ever assumed—you stated he did not directly, but you stated he did indirectly—ever assume indirectly to make an order or give a direction in those cases, and I ask you to put your finger on that case—you have given the telegrams; now, is there anything else?

Mr. MADISON. Mr. Glavis, you stated that Mr. Ballinger made an order in the first instance sending those questions to Mr. Pierce; that is true, isn't it?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. I understood you to say that; I am simply asking for information.

Mr. GLAVIS. Yes, sir.

Mr. MADISON. Now, then, later on these questions did get to the Attorney-General, and the Attorney-General did render an opinion upon the legal questions involved. Who made the order or saw to it that those questions went to the Attorney-General for decision?

Mr. GLAVIS. Mr. Ballinger told me he did; he was going to do it. He told me after I had seen the Attorney-General—he called me over to his office a couple of days afterwards and said the Attorney-General had spoken to him, and that he had told him I had spoken to him about the Alaska coal cases, and he said, "I am going to send the matter over to him for an opinion."

Mr. VERTREES. Mr. Glavis, you have examined this Senate document, haven't you?

Mr. GLAVIS. Not closely. I have examined parts of it.

Mr. VERTREES. Look at page 210 and see if you do not see there a submission of that question by Mr. Frank Pierce, First Assistant Secretary, to the Attorney-General, May 26, 1909, and not by Mr. Ballinger at all?

Mr. GLAVIS. Yes, sir; the letter is signed by Mr. Frank Pierce, First Assistant Secretary.

Mr. VERTREES. When you state Mr. Ballinger told you he was going to do it, do you mean that he told you with reference to this ultimate opinion, or in that first conversation, when he said for you and Mr. Schwartz to get together and draw up a statement of the case that you wanted the Attorney-General's opinion on?

Mr. GLAVIS. No, sir; he said it both times. He said it the first time, and then he didn't do it. Then I went to the Attorney-General, and within a day or two after I had seen the Attorney-General he told me the Attorney-General had told him I had been to see him about the cases, and he was preparing then, he said, to send the case—a letter over to the Attorney-General asking for an opinion.

Mr. MADISON. Now, Mr. Glavis, turn to page 204 of the list. Have you it?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. There is a letter there from Secretary Ballinger to Miles C. Moore, and it was because of the last paragraph of that letter that I asked you the question I did, as to whether or not Secretary Ballinger was responsible for this matter going to the Attorney-General, beginning with the words "I believe," just read, that—

Mr. GLAVIS (reads):

I believe your criticisms are unwarranted, but have myself taken this matter up with the President and the Attorney-General, so that the action of this department will probably be reviewed by the latter, in which event you will be promptly advised.

Mr. VERTREES. There is a statement there that he will take the matter up with them, but the question is—

Mr. GLAVIS. He says here that he had taken it up.

Mr. VERTREES. Take up the matter, this general matter, but the question of the statement of the case, when it came to doing that, did he not give that over to Mr. Pierce as he had throughout?

Mr. GLAVIS. That is evident—when it came to the signing of the name officially, he had that done by his assistant.

Mr. VERTREES. Doesn't Mr. Pierce's opinion contain the four questions that were submitted?

Mr. GLAVIS. Yes, sir.

Senator ROOT. Mr. Glavis, I would like to ask you a question. You drafted, or took part in drafting, the proposed letter to the Attorney-General asking for an opinion?

Mr. GLAVIS. Yes, sir.

Senator ROOT. After having a conference with Secretary Ballinger?

Mr. GLAVIS. Yes, sir.

Senator ROOT. What did you do with that paper when the drafting was completed?

Mr. GLAVIS. I had it either taken or sent over, or I took it over myself.

Senator ROOT. What did you do with the paper itself; did you mail it or hand it to somebody or put it somewhere?

Mr. GLAVIS. No; I took it over to the Secretary's office, or sent it over. I don't recollect which I did, definitely.

Senator ROOT. If you took it over to the Secretary's office, do you remember handing it to anyone?

Mr. GLAVIS. If I took it over, I handed it to Mr. Carr, his private secretary; but I am not sure whether I took it over or not.

Senator Root. And if you sent it over, how did you send it; have you any recollection at all on that?

Mr. GLAVIS. No sir; I haven't. That is what makes me think that I must have taken it over myself. It seems to me I would have remembered having sent it by messenger, I think, if I had sent it by a messenger; but I either sent it by a messenger or took it myself, I think.

Senator Root. So that you don't personally know into whose hands the paper went?

Mr. GLAVIS. No, sir; I am not sure.

Mr. MADISON. Well, that was the first letter that went to the Attorney-General, or was to go to the Attorney-General, but didn't go?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. And turned up in the hands—I don't mean to use that expression—but, in fact, reached Mr. Pierce, and Mr. Pierce rendered the decision instead of the Attorney-General?

Mr. GLAVIS. Yes, sir.

Mr. MADISON. It is that letter you refer to?

Mr. GLAVIS. Yes, sir; but Mr. Pierce told me—

Mr. MADISON. In a subsequent letter or communication that went to General Wickersham, some time in the latter part of May, 1909—

Mr. GLAVIS. No, sir. I didn't have anything to do with the framing of this letter, except I noticed that they used the four statements we used in the other letter. I don't know whether any other part of it is similar or not.

Mr. MADISON. Where is that letter?

Mr. GLAVIS. It is on page 210 of Senate document.

Mr. GRAHAM. A letter to the Attorney-General?

Mr. MADISON. Yes, sir. It is on page 210 of the list.

Mr. GRAHAM. Marginal page 210 of the list?

Mr. MADISON. Yes.

Mr. VERTREES. Who was present, Mr. Glavis, at the interview when the letter was directed to be framed up?

Mr. GLAVIS. Mr. Schwartz, Mr. Dennett, and Mr. Ballinger, and myself. Mr. Carr, Secretary Ballinger's private secretary, was in the room at the time, but at a desk away, quite a ways from the Secretary's desk.

Mr. VERTREES. You and Mr. Schwartz called for a conference, did you not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. For the purpose of getting an opinion as to the proper construction of the act, which had not been construed by the courts; was not that it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You brought it to the attention of the Secretary and he said he thought that was proper too, did he?

Mr. GLAVIS. Well, we didn't bring it—I think Mr. Dennett arranged the appointment with the Secretary.

Mr. VERTREES. But it was at the instance of yourself and Mr. Schwartz?

Mr. GLAVIS. Yes, sir. I wanted to know how they were going to construe it.

Mr. VERTREES. The appointment was arranged, you all got there, and the Secretary told you and Mr. Schwartz to draw up a statement of the cases you wanted an opinion on?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. You left the building then and went elsewhere to do that, didn't you?

Mr. GLAVIS. Yes, sir. Oh, no; I didn't leave right away then.

Mr. VERTREES. What I am getting at is, did you sit right down then and draw it there, or go away and draw it?

Mr. GLAVIS. We didn't draw it until late that afternoon.

Mr. VERTREES. That is what I mean; you left the building and went elsewhere and drew it?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Where did you go?

Mr. GLAVIS. When it was drawn—where I went when it was drawn—or where I went right after the conference?

Mr. VERTREES. I mean when you and Mr. Schwartz drew it, where did you go to draw it? That is what I am trying to get at.

Mr. GLAVIS. We drew it up in his office, in the General Land Office. He went away that afternoon—he dictated it and it hadn't been written when he left, I don't think, and then the next morning I read it over and I inserted that question No. 4.

Mr. VERTREES. Well, wait a moment before you get to that. Mr. Schwartz's office is across the street from the Secretary's office, isn't it, in another building?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. So, you went to see the Secretary in his building, at his office, and after receiving instructions for you and Mr. Schwartz to go draw up such a paper as you wanted, you left there and went back to Mr. Schwartz's office in another building across the street, and there Mr. Schwartz dictated the statement, and left the city, you say?

Mr. GLAVIS. I think he left that afternoon, as I recall it.

Mr. VERTREES. Then you took it up yourself, later?

Mr. GLAVIS. Not then. It was written as he dictated it and the next morning I changed that by adding—I didn't change what he wrote—but I added this other paragraph, No. 4.

Mr. VERTREES. Yes.

Mr. GLAVIS. And then it was rewritten.

Mr. VERTREES. Now, then, what did you do with it then?

Mr. GLAVIS. After it was rewritten? As I stated to Senator Root, I can not recall whether I took it over myself or whether I sent it over by a messenger.

Mr. VERTREES. Did you not send it by a messenger, and isn't that the fact of the case?

Mr. GLAVIS. No; I don't recall that.

Mr. VERTREES. You do not know and you can not make a statement on that point; is that so?

Mr. GLAVIS. No, sir. It seems to me I took it over and handed it to Mr. Carr, but I am not sure about it.

Mr. VERTREES. Do you mean to say your best recollection is that you handed it to Mr. Carr?

Mr. GLAVIS. I am not sure; but I don't remember sending anything over by a messenger; I am not sure about that at all.

Mr. VERTREES. At any rate you have no recollection of it to anyone—

Mr. GLAVIS. No, sir.

Mr. VERTREES. What next do you know about it?

Mr. GLAVIS. The next thing I know about it, on the 19th the next day, I think, after I took it over there, Mr. Pierce me and stated that the Secretary had turned the letter over and had asked him to render an opinion on it.

Mr. VERTREES. Mr. Pierce told you that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Well then, what next?

Mr. GLAVIS. About the letter?

Mr. VERTREES. Let me understand that—you say you went to Mr. Pierce, the First Assistant Secretary, and he told you that the Secretary Ballinger had turned it over to him?

Mr. GLAVIS. Yes, sir; said he didn't want to have anything to do with it—that the Secretary didn't want to have anything to do with it owing to his connection, his past connection, as attorney for the claimants.

Mr. VERTREES. I call your attention to a statement on page 93 of the Senate document, a statement of Mr. First Assistant Secretary (reads):

This paper was sent over to the department and turned over to the assistant attorney-general for the department. Mr. F. W. Clements, first assistant attorney, was then acting as assistant attorney-general, in the absence of Mr. Lawler, the assistant attorney-general for the Interior Department. Mr. Clements was then in California. Mr. Clements and Mr. Finney prepared the paper on the 19th day of May, placing a construction upon the act of May 28, 1908. Mr. Finney was present at the time this paper was prepared.

When this decision of May 19, 1909, had been prepared, it was presented to the department for adoption and signature in the regular course of business. I attach hereto a press copy of this paper (pp. 93-94), from which it will be seen that it was signed by the signature of the First Assistant Secretary. Matters coming to the attention of the office from the General Land Office were regularly assigned to me by Mr. Finney. On March 15, 1909 (copy attached, p. 95), and this letter came to me for consideration in the regular course of business. When the draft was presented to me, both Mr. Clements and Mr. Finney were present. They read down the statutes, read them over, examined the opinion, and stated to me that it seemed to me that the opinion was sound, and then signed it. I gave notice that the press copy which I have annexed has a copy of the writing of "F. W. C." (Mr. Clements) and "E. C. F." (Mr. Finney) on it. I took the press copy and framed the letter. At the time it was presented for signature the Cunningham case was not mentioned, neither were they in my mind. We were construing the act without reference to any case or cases. The original was transmitted in the regular course of business to the General Land Office.

Now, he states there you were present at the time that the decision was prepared?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. At the time Mr. Clements and Mr. Finney were drawing it up; is that correct?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Did you then make any complaint or statement to either of those gentlemen that you were surprised that the matter was being considered by the law officers of that department? Or the Attorney-General?

Mr. GLAVIS. No, sir; because Mr. Pierce had already told me of the change of decision relative to that.

Mr. VERTREES. Did he tell you that the Secretary had given it to him?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Had handed him the paper?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. Pierce told you that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you know it never came to Mr. Pierce at all, that it was sent by messenger to Mr. Finney and handled by him, and that it came into the office that way?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And it came from those subordinate officers to Mr. Pierce and that he had nothing to do with it until it was brought to him; do you not know that to be the truth of this matter, Mr. Glavis?

Mr. GLAVIS. No, sir; and I don't believe it to be so either.

Mr. MADISON. Why not?

Mr. GLAVIS. Because I believe Mr. Pierce was telling me the truth then.

Mr. VERTREES. Didn't he talk with you about the general Alaska situation and say that that had been turned over to him, and not this matter at all; wasn't that what Mr. Pierce was talking about?

Mr. GLAVIS. No, sir; he did not.

Mr. VERTREES. Well, you have stated you went to meet Mr. Pinchot and Governor Pardee at Spokane, or did go to meet Mr. Pinchot; that is the better way to put it; didn't you make that statement?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. When did you go there?

Mr. GLAVIS. To Spokane?

Mr. VERTREES. Yes.

Mr. GLAVIS. I got there about—some time in the early part of August. I met Mr. Pinchot there about two or three days afterwards.

Mr. VERTREES. What time would you fix as the time of your arrival at Spokane?

Mr. BRANDEIS. Did he say he went there to meet Mr. Pinchot, or that he went there and met Mr. Pinchot?

Mr. VERTREES. I am not sure; whichever he says.

Mr. GLAVIS. Anyway, I meant I went there and met him because I didn't go to Spokane especially to see him.

Mr. VERTREES. When is the date I am on—the time is what—what time in August?

Mr. GLAVIS. Well, I can fix it this way; that it was the first day of the irrigation meeting, I think it was, that I saw Mr. Pinchot—the first day of the irrigation congress in Spokane, whatever date that was. I think it was the first few days in August; anyway from the 1st to the 10th of August.

Mr. VERTREES. Now, on page 283 of the record of the evidence, Mr. Glavis—

Mr. GLAVIS. 283?

Mr. VERTREES. Yes. List of orders I should say, on page 283 of the list, at the bottom of the page, I find—this appears to be a daily report of yours for August 9, 1909.

Monday, August 9, 1909. Locality: Spokane, Wash. Services: Conferred with Hon. G. F. Pinchot in re coal cases.

Now, when did you say you arrived there?

Mr. GLAVIS. As I recall, I arrived there Friday or Saturday 6 or 7.

Mr. VERTREES. What did you go there for?

Mr. GLAVIS. I had some coal claimants there to see. I to go up north from Spokane.

Mr. VERTREES. Were you —

Mr. GLAVIS. Let me finish. Up near the Canadian line; I was a town called Republic, or one of the towns up in the north where some coal claimants were residing, and I wanted to go up there to see them.

Mr. VERTREES. Were you expecting to meet Mr. Pinchot?

Mr. GLAVIS. I understood he was coming, and I wanted to see him also; yes, sir.

Mr. VERTREES. How did you understand he was coming?

Mr. GLAVIS. I think it was in the newspaper accounts; I saw over the country who was going to speak there, and when they were going to speak.

Mr. VERTREES. You had no communication with him nor with you in reference to your meeting there?

Mr. GLAVIS. No, sir.

Mr. VERTREES. It was purely accidental?

Mr. GLAVIS. No; I wanted to see him. It was purely accidental on his part, I suppose; but so far as my part is concerned I wanted to meet him.

Mr. VERTREES. Purely accidental on his part?

Mr. GLAVIS. Yes, sir; unless he knew I was going to be there.

Mr. VERTREES. You sent him word?

Mr. GLAVIS. No, sir. Allen was going over to Portland to give a speech there, and I told him I was going there, too.

Mr. VERTREES. Had you not been in communication with the Forestry people before that about these coal cases?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. On July 16?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Look at page 670 of the evidence. Did you make this suggestion to these people when you were speaking to them about these coal cases:

Another point involved, to which your attention is called, is that the coal has been withdrawn from all forms of entry. Therefore, should these filings be canceled, there would be no opportunity for other filings to be made. This would enable the Forest Service to secure certain legislation which would enable it to control the output of coal in a similar manner to that which they are now disposing of.

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, was that matter discussed between you and Mr. Pinchot when you met him at Seattle?

Mr. GLAVIS. As to that feature of it?

Mr. VERTREES. Yes, sir; that feature, the Forestry Service.

Mr. BRANDEIS. You said in Seattle. Did you mean that?

Mr. VERTREES. I meant Spokane.

Mr. GLAVIS. No, sir; I do not think so. I am pretty positive.

Mr. VERTREES. What was discussed?

Mr. GLAVIS. When I met Mr. Pinchot there he had heard of my office about my request of the Forest Service to intervene, and

before him the facts that I had there, and we went over it together, and he called in Mr. Pardee, because Mr. Pardee——

Mr. VERTREES. Who called in Mr. Pardee?

Mr. GLAVIS. Mr. Pinchot asked me whether I would mind telling ex-Governor Pardee what I had stated to him, and I said, "No, I did not," and he called him into the room and we went over it, and went over it more thoroughly than I did in the first instance with Mr. Pinchot.

Mr. VERTREES. You say you went over it. Do you mean those things you have stated here?

Mr. GLAVIS. Yes, sir; I do not remember some of them but I had the instructions and the reports and evidence of that character—I had all that, which I showed him.

Mr. VERTREES. At that time, Mr. Glavis, everything that you had wanted in every way had been granted, had it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And your relations with Mr. Schwartz, all of them, were friendly, so far as you know, were they not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. They had granted everything which you had wished?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, then, what was there to be done in the way of presenting this question that you have presented, and that you presented to Mr. Pinchot? Why was that necessary to be done in order to protect the land that the Forester should intervene? Their request had been granted, and the manner in which you wanted the evidence taken down had been agreed upon and ordered.

Mr. GLAVIS. I thought in view of the fact and the difficulties that it was necessary to get this brought about, and the action and the letters that Mr. Dennett had written, and the action throughout the whole proceedings, that it would only be a matter of a little more time when the cases would come up for hearing again, and they would have to be decided by Mr. Dennett and have to be decided by Mr. Ballinger's office, and I thought their actions demonstrated that they were not fit and proper people to render a decision.

The CHAIRMAN. But, Mr. Glavis, did the Forestry Bureau ever pass upon it? Would they be competent to decide those entries that had been made in the Cunningham cases? Would those cases ever come before the Forestry Bureau for decision?

Mr. GLAVIS. No, sir.

The CHAIRMAN. Could they come before any other tribunal than the General Land Office and the Secretary of the Interior?

Mr. GLAVIS. No, sir; that was the trouble; at the head of those two offices were two men who had taken such action——

The CHAIRMAN. And you wanted them to be decided by the Forestry Bureau, if possible, did you not?

Mr. GLAVIS. No, sir; I knew the law as to that, and knew it would be impossible, but at the head of both the General Land Office and the Interior Department were men whom I felt all the facts justified me in believing would not properly protect the Government's interest when the cases did come up for hearing.

Senator ROOT. Mr. Glavis, am I correct in inferring from what you have now said that the effect which you sought to obtain by con-

sulting the Forestry Bureau was the removal from office Dennett and Mr. Ballinger?

Mr. GLAVIS. No, sir; not that. I did not know what troubled me and I wanted advice about it.

Mr. VERTREES. What advice did you get from Mr. Pinchot?

Mr. GLAVIS. That there was only one thing for me to do, and that was to go to the President with it.

Mr. MADISON. Why did you turn to Mr. Pinchot? What was it that prompted you to do that—what was the motive? Was there something that prompted you to turn to Mr. Pinchot. What?

Mr. GLAVIS. Why, I had absolute faith in him. I believed him absolutely sincere and would not give me any bad advice. I consulted with Mr. Hoyt when I had the benefit of his friendship and guidance, but I did not have anybody else there to give me an opinion and judgment I wanted to depend upon except him.

The CHAIRMAN. Before you met Mr. Pinchot had not the matter been decided already—had not the General Land Office already participated in the hearings, as you requested, until the field examination was completed?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. They had complied with your request?

Mr. GLAVIS. Yes, sir.

The CHAIRMAN. Was there any further necessity for the Bureau to act at that time, then?

Mr. GLAVIS. No, sir; not right then as to the Cunningham case.

The CHAIRMAN. Why did you apply to the Forestry Bureau if you had got a continuance of the hearing as requested and if nothing had been agreed upon—why did you apply to the Forestry Bureau?

Mr. GLAVIS. I applied to them to get that done, and when they refused.

The CHAIRMAN. But you had already got it done before you met Mr. Pinchot at Spokane.

Mr. GLAVIS. I applied to them first. The reason I applied to Mr. Pinchot—

Senator PURCELL. Mr. Chairman, you did not hear his statement. He said these cases had been continued, but he felt that when they came up again they would be tried either by Dennett or Ballinger and he did not believe either of them was competent to decide them.

The CHAIRMAN. Oh.

Mr. GLAVIS. That is what I went to see Mr. Pinchot about.

Mr. VERTREES. The course of procedure would have been to refer it to Commissioner Dennett, would it not?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. And then if a person was dissatisfied with the decision, they would have carried it from him to the Secretary of the Interior, would have passed on it finally?

Mr. GLAVIS. Yes, sir.

Senator FLETCHER. The ordinary course would have been to refer it before the local office?

Mr. GLAVIS. Yes, sir; that would have been the ordinary course.

Mr. VERTREES. This case had already been disposed of by the Secretary of the Interior as to that?

Mr. GLAVIS. From the decision of the department there was no appeal.

Mr. VERTREES. You have already told the committee that Mr. Dennett had already expressed himself more than once—although he was to try the case—to the effect that you had proof enough and that the Government ought to win. You have said that, have you not?

Mr. GLAVIS. No, sir; I do not think I said quite that.

Mr. VERTREES. Had he not said to you more than once that you had made out your case, and that really these letters that you call "funny letters" were not intended for you at all; did he not say in them that you had made out your case and had put all the lands up there in cold storage, and if Congress did not give any relief he did not know what would be done? In other words, did he not express himself on the proposition, and had not Secretary Ballinger told you from the very beginning, and taken the position throughout, that he was not going to try these cases or have anything to do with them, and therefore the matter would come before First Assistant Secretary Pierce?

Mr. GRAHAM. With regard to the answer to that question, I suppose the answers ought to be given seriatim. There are about four questions involved in that one, and I think they are all pretty important. Will you please read it, Mr. Reporter?

The reporter read as follows:

Had he not stated to you more than once that you had made out your case and really these letters that you call "funny letters" were not intended for you at all—

Mr. GLAVIS. No, sir; emphatically not. They were not intended for me.

Mr. VERTREES. If I may be permitted, I will put that question in a different way. I call your attention, Mr. Glavis, to page 48 of Senate Document No. 248—

Mr. GRAHAM. While you are looking that up, for my own information—I do not care who gives it—I want to know in case of an appeal from the decision of the commissioner, who would have the right to take an appeal beside the claimants?

Mr. GLAVIS. In this case the Forestry Service could take an appeal, I think.

Senator FLETCHER. You mean to say, Mr. Glavis, that Mr. Pinchot's bureau was interested in these coal lands in the forest survey in Alaska; in other words, you were asked a while ago what was the reason for your going to Mr. Pinchot about this matter, and you gave as one reason that you had great confidence in him. Is it a fact or not that his bureau or department was concerned with reference to these identical lands involved in the Cunningham coal claims?

Mr. GLAVIS. Yes, sir; they were in a way, but my main reason, I will admit, was the fact that I wanted to see what he thought I ought to do. I did not know what to do.

Mr. MADISON. There is only a part of these Cunningham claims that were in a forest reserve. That is the idea, is it?

Mr. GLAVIS. Yes, sir; about 21, I think, in the forest reserve and 12 outside.

Mr. VERTREES. Had you ever gone to Mr. Pinchot before on any question?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Were you not aware at that time that the relations between the two offices, the Bureau of Forestry and the Land Office, were considerably strained?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Had you not received a letter on the 1st of July notifying you that very soon somebody would take charge in your place?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. From whom did you learn that the relations between the two departments or bureaus were so strained?

Mr. GLAVIS. Oh, I do not know; I just knew it.

Mr. VERTREES. Everybody knew it, did they not?

Mr. GLAVIS. I think they did; yes, sir.

Mr. MADISON. That is a kind of chronic condition between the bureaus and departments, is it not?

Mr. GLAVIS. Well, not in some departments—some bureaus.

Mr. MADISON. It is a very common thing; you understand, do you, that there is rivalry and enmity between bureaus and between departments?

Mr. GLAVIS. Yes, sir; we used to have that feeling, and some toward the Department of Justice, too, in our work; we were handling their work.

Mr. MADISON. Once in a while the Department of Justice would send secret-service men up there, would they not?

Mr. GLAVIS. Yes, sir; they started in that way, but we finally handled it.

The CHAIRMAN. You finally drove them out of the field—your force?

Mr. GLAVIS. We tried to.

Mr. VERTREES. You say your people drove them out, Mr. Glavis?

Mr. GLAVIS. Well, I do not know that we drove them out.

Mr. VERTREES. They got out, did they?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, it was in the light of that situation that you made the suggestion in your letter of July 16 to Mr. Shaw, of the Forestry Office, that "another point involved, to which your attention is called, is that the entire field has been withdrawn from all forms of entry," therefore, those filings be canceled; that is, the Cunningham group, the Alaska field, in fact?

Mr. GLAVIS. In that case it means Alaska.

Mr. VERTREES (reading):

Therefore, should these filings be canceled, there would be no opportunity for other filings to be made. This would enable the Forest Service to secure certain legislation which would enable it to control the output of coal in a similar manner to that in which they are now disposing of the timber.

You were aware of the situation when you wrote that letter, were you not?

Mr. GLAVIS. As to the friendliness or unfriendliness?

Mr. VERTREES. Yes.

Mr. GLAVIS. Yes, sir; and I had never appealed to the Forest Service, I think, before; in fact I have criticised them a great deal, and we used to oppose them in lots of things.

Mr. VERTREES. You never conferred with Mr. Pinchot on any question before this one, on which you at this time consulted him?

Mr. GLAVIS. No, sir.

Mr. VERTREES. Now we will go back to your distrust of Mr. Dennett. Look at page 48 of the Senate document, and there you will find a letter dated July 23 from Mr. Dennett and there you will find a letter from Mr. Fred Dennett to the Secretary in which he tells the Secretary, does he not:

Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained—

Having also previously stated with reference to him—

Davis seems to expect a showing upon the field which would indicate that all developments have been done with the evident purpose of advancing a single interest. He also desires to find out in what manner the employees were paid and information of this kind?

Adding again, what I have just read—

Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained.

Mr. MADISON. What is the question based on?

Mr. VERTREES. The question was going back to it, as to the introduction of the information that Mr. Dennett had. He said he had been distrustful of Mr. Dennett. Does it not show that such was Mr. Dennett's view as I have already inquired about, and which you said you did not recall with distinctness?

The CHAIRMAN. What page is that, Mr. Vertrees?

Mr. VERTREES. It is page 48 of the Senate document.

Mr. GRAHAM. Exhibit 15, at the bottom of the page.

Mr. GLAVIS. Do you mean Mr. Dennett's view relative to my going ahead with my case?

Mr. VERTREES. No; his view of your success, not as to the manner in which, but as to what you had accomplished, what you had done.

Mr. MADISON. It says:

Both Schwartz and myself were of the opinion that he could go to trial on the evidence already obtained.

That is the particular sentence.

Mr. GLAVIS. Mr. Vertrees said that was not.

Mr. VERTREES. No, I said that was.

Mr. GLAVIS. Pardon me. That is his view as expressed to the Secretary, but I think another part of this record discloses that he was not sure whether I had spoken to him or not about the field examination.

Mr. BRANDEIS. What is the date of that letter?

Mr. VERTREES. It is July 23.

Mr. MADISON. That is another matter, Mr. Glavis. That is not what he is asking you about.

The reporter read the last question, as follows:

Mr. BRANDEIS. No; his view of your success, not as to the manner in which, but as to what you had accomplished, what you had done.

Mr. BRANDEIS. Do you mean Mr. Dennett's view of the case was that it was a strong case and he was short of wind?

Mr. VERTREES. Yes.

Mr. GLAVIS. Oh, yes; that seemed to be the view.

Mr. VERTREES. Look at page 48 of Senate document find another letter from Mr. Dennett, commissioner, to dated July 22, dated at Seattle, in which he says:

I will wait here until Sheridan arrives. Wired you this morning also wired Ballinger in accordance with your decision. The little to have arisen. Sheridan is a first-class man and probably has had in trying coal cases than anyone in the service. The wire I sent the Sheridan thinks more time necessary we will have to grant it, but in November is putting the matter off rather long. If they were trying the new law I would not say that, but as they are trying to come they have elected to stand without any hope, not receiving any coal law should be changed.

Senator PURCELL. When they speak of judge in the mean the Secretary, do they?

Mr. VERTREES. Yes, sir. Now look on page 49 and not—

Mr. GLAVIS. Is there any question?

Mr. VERTREES. Yes; I asked you if you did not write time?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Now, on page 49, is there another letter from Dennett, commissioner, to Mr. Schwartz, which contains

Sheridan has taken charge of the Cunningham cases, and impresses ably. I think he can handle it against any rival they may bring. The rest of the Alaska cases are in a bad mess. Glavis is very much enthusiastic of canceling them all and getting the lands back in cold storage just about what will happen unless Congress helps out.

Senator FLINT. Mr. Chairman, it is now 5 o'clock, some matters that the members of the committee would like to; I suggest that we adjourn.

(The record will show the following calls for documents from Messrs. Vertrees and Rasch:)

WASHINGTON
FOREST

The committee is requested to call upon the Bureau of Forestry for letters and papers relating to Alaska coal claims furnished it by Glavis.

JOHN
CAR

The CHAIRMAN. The record will also show the following documents made by the committee:

ON THE SECRETARY OF THE INTERIOR.

(1) Original of affidavit of L. R. Glavis dated September, 1909, in Seattle land office, relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet.

KNUTSON
Chairman

ON THE FORESTER.

FEL

SIR: In his testimony before the joint committee of Congress on the Interior Department and Forestry Bureau yesterday, L. R. Glavis made an affidavit made by him in September, 1909, touching a conversation between Donald A. McKenzie and himself in regard to the failure of President Taft to appoint Mr. Garfield a member of his Cabinet. Mr. Glavis stated that a copy

was forwarded by him to the Forestry Bureau. The committee wish to be furnished with this copy from your files, and I ask that the same be forwarded to the committee at its office, room 210, Senate Office Building, as soon as possible.

Very respectfully,

KNUTE NELSON,
Chairman Joint Committee of Congress.

The FORESTER.

The CHAIRMAN. Responses have been received to calls made by the committee for documents as follows:

THE SECRETARY OF THE INTERIOR,
Washington, February 16, 1910.

SIR: In accordance with the request contained in your letter of January 29, 1910, I have the honor to submit herewith:

(1) Unsigned copy of interview of Watson Allen by Special Assistant Attorney Hoyt, dated March 30, 1907.

(2) Letter of February 10, 1910, from Chief of Field Division Andrew Christensen, addressed to Mr. H. H. Schwartz, transmitting unsigned copy of interview above mentioned. I also inclose the envelope in which the above-mentioned papers were forwarded to Mr. Schwartz, postmarked "Portland, Oregon, February 10, 1910," for the purpose only of showing that the papers in question are furnished at the earliest possible date.

Very respectfully,

R. A. BALLINGER,
Secretary.

Hon. KNUTE NELSON,
*Chairman Joint Committee of Congress to Investigate the
Interior Department and Forestry Bureau, Washington, D. C.*

THE SECRETARY OF THE INTERIOR,
Washington, February 16, 1910.

SIR: In further reply to your letter of the 12th instant, requesting certain documents, reports, correspondence, etc., on the files of this department, I have the honor to submit herewith the third installment of documents requested, which are enumerated as indicated in the list which accompanied your letter, as follows:

1. Letter of February 11, 1909, from Representative Mondell to Director Newell, of the Reclamation Service, inclosing a letter from John P. Arnott relative to withdrawal of certain lands along the Big Horn River, Wyoming.

Copy of letter of February 4, John P. Arnott to Representative Mondell, above mentioned.

Letter, February 17, 1909, Supervising Engineer Savage to Director of the Reclamation Service, requesting information as to how to answer inquiries with respect to withdrawals under section 3 of the reclamation act, which were for power conservation.

Office copy of letter of February 17, 1909, supervising engineer Reclamation Service, Helena, Mont., to register and receiver, Bozeman, Mont., relative to application of Carl Vollmer to make commutation proof.

Office copy of letter of February 27, 1909, from Acting Director Bien to supervising engineer Reclamation Service, Helena, Mont., inclosing copy of letter of February 23, 1909, from the Director Reclamation Service to Representative Mondell.

Carbon copy of letter of February 23, 1909, from Director Reclamation Service to Representative Mondell, replying to letter of February 11, 1909, from Mr. Mondell.

Letter of February 25, 1909, from Representative Mondell to Director Newell, of the Reclamation Service, relating to withdrawals along Big Horn River, Wyoming, together with copy of letter addressed to Secretary Garfield bearing on same subject.

Office copy of letter of March 2, 1909, from Secretary Garfield to Representative Mondell in relation to withdrawals under section 3 of the reclamation act for the purpose of making investigation of power possibilities.

(The above correspondence was furnished by the Reclamation Service.)

2. Furnished February 8. (See reference in letter of February 12, 1909.)

3. With reference to No. 3, the Director of the Reclamation Service under date of the 15th instant reports that "copy of this paper was not placed on file, and was probably destroyed."

4. Letter of March 19, 1909, from Senator Heyburn to Secretary Ballinger.

5. Copy of letter of March 20, 1909, from Secretary Ballinger to Senator Heyburn.

6. No letter or other document such as indicated has as yet been located in the files of the department.
 7. Furnished. (See reference in letter of February 12, 1910.)
 8. Office copies of four letters from the Secretary of the Interior to the Secretary of Agriculture, dated April 13, 1909, with related memoranda, relative to administrative sites in national forests. (National Forests—Administrative Sites—General, 2-5, pt. 1.)
 9. Furnished. (See reference in letter of February 12, 1910.)
 10. Not in the files of this department.
 11. Copy of letter of June 8, 1909, from the Secretary of the Interior to the Attorney General requesting an opinion in the matter of administrative-site withdrawals found in File Administrative Sites—General—No. 2-5, part 1, submitted herewith in response to paragraph 8.
 12. Office copy of letter of March 21, from Chief Engineer Davis, of the Reclamation Service, to Supervising Engineer Weymouth.
 13. Office copy of letter of July 10 from Director Newell, of the Reclamation Service, to Senator La Follette, and original letter of July 7, 1909, from Senator La Follette to Director Newell, together with envelope marked "personal," in which the last-mentioned letter was transmitted.
 14. Not in the possession of this department.
 15. Presumably in the Forest Service.
 16. Furnished February 12, 1910.
 17. Furnished February 12, 1910.
- Very respectfully,

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress, etc.,
Washington, D. C.

R. A. BALLINGER, Secretary

DEPARTMENT OF AGRICULTURE,
 OFFICE OF THE SECRETARY
Washington, D. C., February 16,

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress to Investigate the
Interior Department and Forestry Bureau, Washington, D. C.

SIR: In compliance with your request of the 2d instant, I am sending you with all papers in the files of this department received from Louis R. Glavis relative to the Alaska coal claims. These papers have been classified and jacketed as follows:

Jacket No. 1. Original letters: (1) Letter from Glavis to Forester, dated September 18, 1909, transmitting certain papers; (2) letter from Commissioner Dennis Glavis relative to Alaska coal lands; (3) letter from Arthur R. Bowman, agent, General Land Office, to Glavis relative to Alaska coal lands.

Jacket No. 2. Miscellaneous copies of communications and blueprints relative to the Alaska coal claims.

Jacket No. 3. Miscellaneous copies of affidavits and copies of correspondence relating thereto from entrymen in Alaska coal cases.

Jacket No. 4. Copy of Mr. Glavis's report to the President, dated August 11, 1909.

Jacket No. 5. Duplicate copies of portions of Mr. Glavis's report.

Jacket No. 6. List of entrymen in the Alaska coal field, furnished by Mr. Glavis.

Jacket No. 7. Duplicate copies of various correspondence and reports. (These are duplicates of the correspondence found in jacket No. 2.)

Jacket No. 8. Two stenographers' notebooks purporting to be the notes by Spaulding, special agent, in taking dictation from Commissioner Dennett. Spaulding was assigned to duty under Mr. Glavis. These notebooks were found in the Forest Service files.

I am informed by the Forest Service that the above are all the papers received by the Forest Service from Mr. Glavis, as shown by a thorough search of the service files, with the exception of certain papers sent by Mr. Glavis to the Forest Service by special messenger, the service delivered to Mr. Sheridan and to Mr. Christensen, of the General Land Office. Lists of the above papers will be found in jacket No. 2.

Very respectfully,

JAMES WILSON, Secretary

THE SECRETARY OF THE INTERIOR,
Washington, February 16, 1910.

SIR: In further reply to your letter of January 31, containing a list (p. 361, testimony) of documents desired by your committee, with respect to the papers called for by paragraph 10 of said list, I have the honor to say that a careful and thorough search throughout the files of this department has been made without locating any correspondence whatever from Hon. Wade Ellis.

With regard to paragraph 13 of said list, requesting "list of stockholders of all different companies holding Alaska coal claims," I have to say that neither the Secretary's office nor the General Land Office has any information whatever along the lines suggested. If the names of the companies were given, copies of their articles of incorporation might be obtained from the secretary of state of the States in which the companies were incorporated, but otherwise this department has no facilities for securing the information desired.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress to Investigate the
Interior Department and the Forestry Bureau, Washington, D. C.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C., February 2, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress,
United States Senate, Washington, D. C.

SIR: Your letter of February 1, 1910, addressed to the Forester, relative to an affidavit mentioned by L. R. Glavis in his testimony before your committee, has been referred to me for attention, in view of the fact that all the papers in the possession of this department relative to the matter before your committee are in my office for use in the preparation of a digest thereof.

In compliance with your request I inclose herewith the affidavit in question.

Very respectfully,

GEO. B. McCABE, Solicitor.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 18, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress.

SIR: On February 1, 1910, the joint committee called for "Original of affidavit of L. R. Glavis, dated September, 1909, now or formerly in Seattle Land Office relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet."

In response thereto I hand you herewith a letter from Chief of Field Division A. Christensen, dated February 4, 1910, inclosing the following exhibits:

Exhibit A. Copy of affidavit as transcribed by Miss Shartell to whom the certificate or affidavit made by Horace Tillard Jones and L. R. Glavis was dictated.

Exhibit B. Affidavit made by said Ella M. Shartell relative to the circumstances under which the certificate or affidavit was dictated to her by Special Agent Jones and L. R. Glavis.

Exhibit C. Affidavit of Raymond E. Gery concerning his knowledge of such an affidavit.

Exhibit D. Affidavit of Practical Miner George A. Parks concerning his knowledge of the existence of such an affidavit.

Exhibit E. Affidavit of A. Christensen concerning his knowledge of the existence of such an affidavit.

Exhibit F. One of the three original affidavits which were made by Age and Glavis at that time.

Exhibit G. Affidavit of Special Agent Jones relative to this affidavit and t position made of the two others.

Very respectfully,

FRED DENNETT, *Comm*

The CHAIRMAN. If agreeable to counsel, the hearing will adjourned.

(Accordingly, at 5 o'clock p. m., the committee adjourned t morrow, Saturday, February 19, at 10 o'clock a. m.)





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